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IN

# The United States Circuit Court of Appeals

FOR THE NINTH CIRCUIT

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KATHRYN STRUETT, Formerly KATHRINE  
SMITH,

*Appellant,*

VS.

HARRY B. HILL,

*Appellee.*

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TRANSCRIPT OF RECORD

WM. P. LORD,

*Solicitor for Appellant.*

GRIFFITH, LEITER & ALLEN and ROBERTS & SKEEL,

*Solicitors for Appellee.*

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FILED

JAN 8 - 1921



# The United States Circuit Court of Appeals

FOR THE NINTH CIRCUIT

Be It Remembered, That on the second day of March, 1919, there was duly filed in the District Court of the United States for the District of Washington, Southern Division, a Complaint in words and figures as follows, to-wit:

IN THE DISTRICT COURT OF THE  
UNITED STATES, IN AND FOR THE  
DISTRICT OF WASHINGTON,  
SOUTHERN DIVISION

Kathryn Struett, formerly Katherine Smith,  
Complainant,

Vs.

Harry B. Hill, Respondent.

NO. E. 85

COMPLAINT

Filed March 25 1919

To the Honorable Judge of the Above Entitled Court,  
in Equity Sitting:

The bill of complaint of Kathryn Struett, exhibited  
against Harry B. Hill, in a suit in equity to cancel,

annul, and set aside a certain deed, is now brought to Your Honor in this District for the causes and matters hereinafter set forth and thereabout your orator complains and alleges:

### I.

That the complainant, Kathryn Struett, is a citizen and resident of the State of Oregon and maintains her domicile in the City of Portland in said State, and she is now and at all times herein mentioned, has been a citizen of a different State than the respondent.

### II.

That Harry B. Hill, now is, and at all times herein mentioned, has been a citizen and resident of the State of Washington, and a resident in said State and within the City of Altoona, County of Wahkiakum, Washington, and is now a citizen of a different State than the complainant herein.

### III.

That the amount <sup>or value</sup> in controversy in this suit is in excess of, and greater than the sum of Three Thousand Dollars, (\$3,000.00), exclusive of interests and costs.

### IV.

That on or about the 13th day of October, 1906,

Sarah J. Anderson, the mother of ~~the~~ complainant, conveyed to complainant, Kathryn Struett, the following described real property, situated ~~in~~ in the County of Clarke, State of Washington, to-wit:

Beginning 37.42 chains East and 15.68 chains South of the Northwest corner of Section 10, Tp. 2, North Range 1 East W. M., running thence South 4.32 chains to the Southeast corner of the Hannah J. Tyszkiewicz tract, thence East 17.81 chains, more or less, to the center of the County road, thence North 7 degrees and 45 minutes West along said road 4.36 chains, thence West 17.28 chains, more or less, to the place of beginning, containing 7.58 Acres, more or less.

Reserving, however, unto the said Sarah J. Anderson, and her assigns, the free and unobstructed use during the period of her natural life, of all improved lands on said described tract and of all improvements thereon.

## V.

That thereafter, and on or about the 16th day of June, 1912, the said Sarah J. Anderson died and complainant is possessed of the rights and interests in the said described property, but for the acts and things herein complained of, brought about and done by respondent, Harry B. Hill.

## VI.

That after the death of said Sarah J. Anderson, and on or about the 21st day of September, 1912, the complainant mortgaged to John Kramer for a consideration of Five Hundred Dollars (\$500.00), the said described premises, and the said mortgage was for two years, at 8 per cent interest, and on or about the 19th day of October, 1915, the said mortgage was past due and the said John Kramer had commenced a suit in the Superior Court of the State of Washington, for Clarke County, against complainant to foreclose said mortgage, all of which was well known to respondent.

## VII.

Your orator further charges and causes Your Honor to be informed that Kathryn Struett is a very sensitive and affectionate woman, and for many years prior to the 10th day of August, 1916, Kathryn Struett, complainant, and Harry B. Hill, respondent, were firm, fast and close intimate friends, engaging and entering upon all manners and sorts of confidential and intimate relationships comprising their social and commercial intercourse between themselves and with others; that the respondent was many years older than the complainant and during said times, the respondent did represent and persuade complainant to believe that he possessed an overpowering affection for complainant, and had her interest at heart, that his intentions towards plaintiff

were honorable, and by reason thereof, complainant was accustomed to, and did repose unbounded confidence in the advice, consort and opinions of respondent, Harry B. Hill, and considered and acted upon his every request as equivalent to a command and direction the thing required or bidden of her, the said Kathryn Struett, to be done, and so it was that during the times hereinafter mentioned, the respondent exercised his said influence in such manner that Kathryn Struett at all times, and in all affairs relative to her plans and proposals in business and society acted in consort and accordance with the plan, purpose, advice and counsel of Harry B. Hill, and this relationship during all the times herein mentioned existed and continued.

### VIII.

Your orator further charges that during the times herein mentioned, complainant, Kathryn Struett, in her private life and business affairs was influenced, prevailed upon and affected by the counsel, advice and acts and doings of Harry B. Hill, in such a way and manner that Harry B. Hill, using his strength of will, influence and persuasion with complainant, Kathryn Struett, that on or about the 10th day of August, 1916, and for a long time prior thereto, was under the sole influence, control and direction of the respondent, Harry B. Hill.

### IX.

Your orator further charges that during the year

1916, the complainant Kathryn Struett was engaged in the rooming house business in the City of Portland, State of Oregon, and was not prospering in her said business, and was beset with financial difficulties and by reason thereof was much perturbed and distressed as well as by her relationship with respondent, who, during the times herein mentioned, was a married man, but had been separated from his wife for several years, and whom he represented to complainant, was residing in the East, and from whom he would secure a divorce at a proper time; that during the times herein mentioned, and for some time prior thereto, the respondent had ingratiated himself with complainant's relatives by causing them to believe that respondent had a great affection for Kathryn Struett, complainant, and his attentions, affections and interest in complainant were serious and honorable, and her acts and doings in her relationship with respondent were prevailed upon and affected by the counsel of her said relatives, who urged and importuned the complainant to act in accordance with the advice, counsel and direction of respondent, Harry B. Hill; that during the times hereinbefore mentioned, respondent, Harry B. Hill, was residing away from the City of Portland, Oregon, and was visiting at complainant's home for several days each month, and was constantly writing to complainant during his absence of his affection and regard for her; that respondent represented to complainant that she need not



worry about the lack of success attendant upon the operation of her said rooming house, and the moneys due on the Kramer mortgage, for the respondent was able to and would pay and discharge said mortgage, as a present and expression of his, respondent's affections and regard for complainant, and would provide for her; and during said times, respondent was making complainant small presents and entrusting her with moneys which respondent was investing in some device, and representing to complainant that he was giving her an interest in said device when it was patented; that during said times, respondent was representing to complainant that he had applied for an endowment insurance policy in the principal sum of Five Thousand Dollars, (\$5,000.00), in which complainant was named as the beneficiary with the respondent, and that he had made a disposition of his property by last will and testament, and that the complainant was the beneficiary therein; so that complainant would not come to want in event of respondent's death, and thereupon, and on or about the 20th day of October, 1915, or thereabout, the respondent paid the aforementioned mortgage together with interest and taxes, and the same on said day was cancelled and satisfied of record, and respondent informed complainant that the same was a present to complainant from respondent, and was an expression of his, the respondent's appreciation and affection for complainant.

## X.

That thereupon and between the 20th day of October, 1915, and the 10th day of Aug., 1916, the said respondent, Harry B. Hill, in order that he might keep said complainant under his influence and control, and that he might obtain, possess and control said described property, did advise, direct, solicit, influence and prevail upon Kathryn Struett to believe, and did cause her to believe, and did represent to her, the said Kathryn Struett, that the real property hereinbefore described would become involved and wholly lost to her unless she conveyed said property over to respondent, that complainant should convey said property over to respondent to protect her against her improvidence and so that she would always have it, and respondent would re-convey said property when complainant so desired, and when complainant would request a conveyance thereof.

## XI.

And your orator further charges that Harry B. Hill, respondent, so that he might keep Kathryn Struett under his influence and control and obtain said real property, and accomplish the transfer of it to him for his own use and benefit, to the exclusion of her, Kathryn Struett, and in pursuance thereof, while keeping her under his influence and control and inciting her in perplexity and distress so that she did not have the independence of mind or resort to other independent and un-

prejudiced advice, and while depriving her, Kathryn Struett, of her free agency of mind and will and the untrammelled exercise of her powers of individual preference in all the manners and ways hereinbefore described, the said respondent, Harry B. Hill, in breach of the confidential relationship as apparent friend and confidential advisor, when really designing to act for his own interest and personal benefit, did prevail upon, induce and procure complainant, Kathryn Struett, to make and execute a certain deed without consideration, and really made and executed because of and pursuant to the aforesaid influence and described representation as hereinbefore described and not otherwise, on the 10th day of August, 1916, to Harry B. Hill, respondent, herein, of all the following described property in Clarke County, Washington, being the property first in this bill of complaint described as follows, to-wit: .

Beginning 37.42 chains East and 15.68 chains South of the Northwest corner of Section 10, Tp. 2, North Range 1 East W. M., running thence South 4.32 chains to the Southeast corner of the Hannah Tyszkiewicz tract, thence East 17.81 chains, more or less, to the center of the County road, thence North 7 degrees and 45 minutes West along said road 4.36 chains, thence West 17.28 chains, more or less, to the place of beginning, containing 7.58 Acres, more or less.

## XII.

Your orator further causes Your Honor to be informed and therefore alleges that respondent did not immediately have said deed recorded, the same having been witnessed and acknowledged so as to entitle it as a deed of record, and that thereafter, and on the 6th day of June, 1917, the respondent, Harry B. Hill, caused said deed to be recorded in the Deed Records of Clarke County, Washington, being Volume 120, of said Deed Records, at Page 587 thereof.

## XIII.

Your orator further charges that the aforesaid deed of August 10th, 1916, of Kathryn Smith, now Kathryn Struett, to Harry B. Hill, as described, was so far as complainant, Kathryn Struett, was concerned, without consideration, and that the execution of the same was obtained by respondent, Harry B. Hill, by the means and under the influences hereinbefore set forth, and without any other consideration therefor; that prior to the filing of this bill of complaint, the complainant has requested and demanded the respondent to re-convey said described property to the complainant, but respondent has refused so to do and does now refuse so to do; that respondent, Harry B. Hill, did not at the date of said deed, pay, nor has not since paid any consideration whatsoever therefor, and took said lands pursuant to

a secret intention to keep and secure said lands for himself, all of which was done in violation of the breach of confidence and relationship between friend and friend, when in relation of advisor one to the other and against the law.

#### XIV.

Forasmuch as your orator is without remedy elsewhere than in equity and has no speedy, plain, adequate or complete remedy at law and to the end that Your Honor may consider of the foregoing facts and matters and pronounce in accordance with equity and good conscience to the full relief of your orator;

May it please Your Honor to issue and grant unto your orator who now prays, a writ of injunction and restraining order *pendente lite*, in accordance with the rules and practice of this Court, directed against the respondent, his agents, servants, confederates and employees, and those acting, by, through, or under him, from in any manner incumbering, disposing of, or in any wise changing the status in regard to, the said real property in this bill of complaint described, or any of its tenements, appurtenances or hereditaments thereto belonging, and to immediately desist, quit and refrain from in any wise doing anything to affect or interfere with the title and possession thereof until such time as Your Honor shall appoint and direct, or may order herein; and if upon any hearing had then the writ of

restraint herein prayed for be held and confirmed until final determination of this suit, and thereupon said injunction and restraining order may be made perpetual.

Your orator further prays that the deed dated on or about the 10th day of August, 1916, in Clarke County, Washington, in Volume 120, at Page 587, of the Deed Records of Clarke County, Washington, by Kathryn Smith, now Kathryn Struett <sup>crine</sup> to Harry B. Hill, conveying property therein described as set forth be set aside, cancelled, annulled and held for naught, and that the respondent, Harry B. Hill, be required to surrender and deliver up the said deed and that he be forever barred, enjoined and foreclosed from setting up any estate right title or interest in the premises described in said deed.

Your orator prays for such other, further, separate, additional and different general relief as the nature of the case may allow and that shall to the conscience of Your Honor in equity sitting appertain and seem meet in the premises.

May it please Your Honor thereto to grant unto the complainant a writ of subpoena in conformity to practice and rules in equity directed to the said respondent, Harry B. Hill, commanding him at a certain time and under penalties provided by law and the aforesaid rules, personally to appear before this Honorable Court and there and then full, true and correct and perfect

and recorded on or about the 6th day of June, 1917

answer make to all and singular the premises and to stand to, perform and abide by such other, further or different order, direction and decrees of this Court as shall seem meet to be granted by Your Honor and agreeable to equity and good conscience; and that Your Honor issue and grant, pursuant to the Acts of Congress in such cases made and provided, your order herein directing the respondent to appear and answer under oath and on or before a day certain the several allegations of this, your orator's bill, in accordance with the rules aforesaid, and the rules and established practice of this Honorable Court.

MRS. KATHRYN STRUETT,  
Complainant

WM. P. LORD,  
Solicitor for Complainant and of Counsel

United States of America }  
District of Oregon } ss.

I, Kathryn Struett, being first duly sworn, on oath depose and say that I am the complainant in the within entitled suit; that I have read the foregoing Bill in Equity and know the contents thereof, and the same is true as I veritably believe

KATHRYN STRUETT

Subscribed and sworn to before me this 18th day of  
March, 1919



WM. P. LORD,

Notary Public for Oregon

My commission expires Dec. 22, 1920

And 'Thereafter, to-wit, on the ~~six~~<sup>40</sup>th day of May, 1919, there was duly filed in the District Court of the United States for the District of Washington, Southern Division, an answer, in words and figures as follows, to-wit:

(Title Omitted)

To the Honorable Judge of the Above Entitled Court  
in Equity Sitting:

Respondent answering the complaint of the complainant admits, denies and alleges as follows:

I.

Answering Paragraphs I, II, III, IV, VI, and XII of the complaint, respondent admits each and every allegation thereof as alleged.

II.

Respondent answering Paragraphs VII, VIII, X, XIII and XIV of the complaint denies each and every allegation of each and all of said Paragraphs VII, VIII, X, XIII and XIV.

III.

Respondent answering Paragraph V of complaint



admits that on or about the 16th day of June, 1912, the Sarah J. Anderson mentioned in the complaint died and that complainant then became possessed of rights and interests in the property described in the complaint.

Further answering said Paragraph V of the complaint, respondent denies each and every allegation therein contained, save and except as in this answer admitted.

#### IV.

Respondent answering Paragraph IX of the complaint admits that the complainant was, during the year of 1916, engaged in the rooming house business in the City of Portland, State of Oregon.

Further answering said Paragraph IX of the complaint, respondent denies each and every allegation in said Paragraph IX contained, save and except as in this answer admitted.

#### V.

Respondent answering Paragraph XI of the complaint admits that the complainant executed and delivered to the respondent a certain deed on or about the 10th day of August, 1916, and that the property described in said deed is the same as that described in said Paragraph XI of the complaint.

Further answering said Paragraph XI of the complaint the respondent denies each and every allegation in said Paragraph XI contained, save and except as in this paragraph admitted.

For a separate answer and defense to the complaint of the complainant, the respondent, Harry B. Hill, alleges as follows:

### I.

That between the first day of January, 1914, and the 10th day of August, 1916, the respondent loaned and delivered to complainant for her accommodation and at her request, without any time being agreed upon for repayment, sundry and divers sums of money amounting in the aggregate to the sum of One Thousand (1,000) Dollars.

### II.

That on said 10th day of August, 1916, complainant made, executed, acknowledged and delivered to the respondent her deed in fee simple whereby the said complainant conveyed and sold to the respondent as security for said aggregate debt and taxes the following described property and premises, to-wit:

The following described real estate situate in the County of Clarke, State of Washington, to-wit:

Beginning 37.42 chains East and 15.68

chains South of the Northwest corner of Section 10, Tp. 2, North Range 1 East W. M., running thence South 4.32 chains to the Southeast corner of the Hannah Tyszkiewicz tract, thence East 17.81 chains, more or less, to the center of the County road, thence North 7 degrees and 45 minutes West along said road 4.36 chains, thence West 17.28 chains, more or less, to the place of beginning, containing 7.58 Acres, more or less.

Which certain deed was intended and agreed between the parties thereto to be and to operate simply as a mortgage of said premises and as security for the payment of the aggregate debt aforesaid and for the repayment of any and all taxes thereafter paid by respondent upon said property, together with interest at legal rate; a copy of which deed in words, letters and figures is as follows:

The Grantor, Katherine Smith, a widow, formerly Katherine Anderson, for and in consideration of One thousand and no/100 dollars in hand paid, conveys and warrants to H. B. Hill, of Cascade Locks, Oregon, the following described real estate situate in the County of Clarke, State of Washington, to-wit: Beginning 37.42 chains East and 15.68 chains South of the Northwest corner of Section 10, Township 2 North Range 1, East W. M., running thence South 4.32 chains to Southeast corner of the Hannah Tyszkiewicz tract, thence East

17.81 chains more or less to the center of the county road; thence North 7 degrees 45 minutes West along said road 4.36 chains, thence West 17.28 chains more or less to the place of beginning containing 7.58 acres more or less.

Dated this 10th day of August, A. D., 1916.

(Signed) KATHERINE SMITH (Seal)

Executed in presence of:

(Signed) F. W. TEMPES.

State of Washington }  
County of Clarke } ss.

I, F. W. Tempes, do hereby certify that on this 10th day of August, A. D. 1916, before me personally appeared Katherine Smith to me known to be the individual described in and who executed the within instrument, and acknowledged to me that she signed and sealed the same as her free and voluntary act and deed, for the uses and purposes therein mentioned.

Given under my hand and Official Seal, this 10th day of August, A. D. 1916.

(Seal)

(Signed) F. W. TEMPES,

Notary Public in and for the State of Washington, residing at Vancouver in said county.

## III.

That after the execution and delivery of said deed, intended as a mortgage, and on the fifth day of February, 1918, the respondent at the request of the complainant and in accordance with said agreement paid the taxes on said land amounting to the sum of fourteen and 38/100 (\$14.38) dollars.

## IV.

The the respondent thereafter and before the commencement of this suit demanded payment of said sums and both of them with interest, but the complainant refused and still refuses and neglects to pay the same or any part thereof.

Whereby respondent, Harry B. Hill, prays:

1. For judgment for the sum of One Thousand (\$1,000) dollars, with interest at the rate of six (6) per cent per annum from the fifth day of February, 1918, and for costs and disbursements of this suit.

2. That the said deed may be adjudged to be a mortgage and the first lien upon the premises described in said deed for the aggregate amount of said debt and interest, costs and disbursements.

3. That the usual decree may be made for the sale of said premises by the proper officer, according to law,

and the practice of this court:

That the proceeds of said sale may be applied (1) To the expenses of sale and costs and disbursements of this suit. (2) To the payment of the aggregate amount due to the respondent, together with interest, and that the said complainant and all persons claiming under her subsequent to the execution of said deed, either as purchasers, incumbrances, or otherwise, may be barred or foreclosed of all rights, claims, or equity of redemption in the said premises, and every part thereof, and that the said respondent may have judgment and execution against the said complainant for any deficiency which may remain after applying all the proceeds of the sale of said premises properly applicable to the satisfaction of said judgment.

4. That the respondent or any other party to the suit may become a purchaser at said sale; that the proper officer selling said property in said foreclosure execute a deed to the purchaser; that said purchaser be let into the possession of the premises on production of said officer's deed thereof; and that the respondent may have such other or further relief in the premises as to this court may seem meet and equitable.

JOHN W. ROBERTS and  
GRIFFITH, LEITER & ALLEN,  
Attorneys for Respondent.

State of Oregon        }  
 County of Clatsop    } ss.

You, Harry B. Hill, swear, or solemnly affirm that what is contained in this, your answer, as far as concerns your own act and deed is true of your own knowledge, and that what relates, to the act and deed of any other person or persons, you believe to be true.

HARRY B. HILL,

Subscribed and sworn to before me this third day of May, A. D. 1919.

(Seal)

OLOF ANDERSON,

Notary Public for the State of Oregon. My commission expires January 14, 1921.

State of Oregon        }  
 County of Multnomah } ss.

Due and legal service of the within answer is hereby admitted in the City of Portland, County of Multnomah, State of Oregon, this sixth day of May, 1919, by receiving a true copy thereof, duly certified to as such by Harrison Allen, <sup>of</sup> counsel for respondent.

WM. P. LORD,  
 Ot Attorneys for Petitioner

And Thereafter, to-wit, on the fourth day of June, 1919, there was duly filed in the District Court of the United States for the District of Washington, Southern Division, a

## REPLY

in words and figures as follows, to-wit:

(Title Omitted)

To the Honorable Judge of the Above Entitled Court in Equity Sitting:

Complainant replying to respondent's further and separate answer and defense, admits, denies and alleges as follows:

### I.

Complainant denies each and every allegation set forth in Paragraphs I, II, III and IV of respondent's separate answer and defense.

Wherefore, complaintant reiterates the prayer contained in her complaint filed herein.

WM. P. LORD,

Attorney for Complainant

Filed June 4, 1919.

United States of America }  
District of Oregon } ss.



I, Kathryn Struett, being first duly sworn, on oath depose and say that I am the complainant in the within cause; that I have read the foregoing copy of Reply and the same is true as I verily believe.

MRS. KATHRYN STRUETT,

Subscribed and sworn to before me this second day of June, 1919.

(Seal)

WM. P. LORD,

Notary Public for Oregon

*My Commission Expires  
Dec. 26th, 1920.*

United States of America }  
District of Oregon } ss.

Due and legal service of the within reply to respondent's separate answer and defense herein is hereby admitted in Portland, Oregon, this sixth day of June, 1919.

GRIFFITH, LEITER & ALLEN,  
*of Solicitors* Attorneys for Respondent

Filed June 4, 1919.

And Thereafter, to-wit, on Wednesday, the 29th day of October, 1919, in the District Court of the United States for the District of Washington, Southern Division, before the Honorable Edward E. Cushman, Judge of said District Court, in equity sitting, the following proceedings were had, to-wit:

(Title Omitted)

This cause came regularly on to be heard before the Honorable Edward E. Cushman on Wednesday, the 29th day of October, 1919. Complainant was present in person and by William P. Lord, her counsel, and respondent was present in person and by John W. Roberts, his counsel, and both parties having announced themselves ready for trial, the cause was heard and tried to the Court without a jury. During the progress of the trial the respondent requested permission to amend the complaint so as to allege the payment of taxes for the years of 1915 and 1917. Counsel for complainant did not object, and the amendment was permitted by the Court. Both parties having introduced their evidence and rested their case and the Court having heard the argument of counsel, and being fully advised in the premises finds:

## I.

That the complainant has failed to establish the allegations of her complaint, and is not entitled to recover in the action, and the complaint of complainant should be dismissed.

## II.

The Court further finds that the complainant Kathryn Struett is indebted to the respondent, Harry B. Hill

in the sum of One Thousand Dollars (\$1,000.00) for moneys advanced, and in the sum of Twenty-nine and 20/100ths Dollars (\$29.20) for taxes advanced and paid by the respondent, and that complainant is indebted to the respondent in the sum of \$1,029.20 with interest thereon at the rate of six per cent per annum from the 29th day of October, 1919, until paid.

### III.

That Kathryn Struett, the complainant, was formerly Katherine Smith, and that Kathryn Struett, the complainant, is the same person who, on the 10th day of August, 1916, executed to Harry B. Hill a deed conveying to the said Harry B. Hill the following described property in Clarke County, Washington, to-wit:

Beginning 37.42 chains East and 15.68 chains South of the Northwest corner of Section 10, Tp. 2, North Range 1 East W. M., running thence South 4.32 chains to the Southeast corner of the Hannah & Tyszkiewicz tract, thence East 17.81 chains, more or less, to the center of the County road, thence North 7 degrees and 45 minutes West along said road 4.36 chains, thence West 17.28 chains, more or less, to the place of beginning, containing 7.58 Acres, more or less.

Which deed was and is duly filed for record on the sixth day of June, 1917, in the records of Clarke County,

Washington, and recorded in Volume 120 of Deeds at page 587 thereof. That said deed was given by the complainant Kathryn Struett, then Katherine Smith to the respondent Harry B. Hill to secure to him the repayment of moneys advanced, which sum the Court now finds to be \$1,029.20, and that the same is a mortgage and constitutes a first and prior lien upon the above described premises, to secure to Harry B. Hill the payment of said sum, together with interest and costs of this action, and he is entitled to have the same foreclosed in manner by law provided, and said property sold to pay said indebtedness, together with interest, costs and disbursements.

It is, therefore, now by the Court ordered, adjudged and decreed that the action of Kathryn Struett, formerly Katherine Smith, the complainant herein should be and the same is hereby dismissed with costs.

And it is further ordered, adjudged and decreed that Harry B. Hill do have and recover of and from Kathryn Struett, formerly Katherine Smith, a judgement for and in the sum of One Thousand Twenty-nine and twenty-one hundredths Dollars (\$1029.20) with interest thereon at the rate of six per cent per annum from the 29th day of October, 1919, until paid, and for all proper costs and disbursements of the action.

And it is further ordered, adjudged and decreed that that certain deed made, executed and delivered by Kath-

erine Smith, now Kathryn Struett, to Harry B. Hill on the 10th day of August, 1916, and which is recorded in the office of the County Auditor of Clarke County, Washington, in Volume 120 of Deeds at Page 587 thereof, be and is hereby declared to be a mortgage and a first lien upon the following described real estate in Clarke County, Washington, to-wit:

Beginning 37.42 chains East and 15.68 chains South of the Northwest corner of Section 10, T<sup>p</sup>. 2, North Range 1 East W. M., running thence South 4.32 chains to the Southeast corner of the Hannah J. Tyszkiewicz tract, thence East 17.81 chains, more or less, to the center of the County road, thence North 7 degrees and 45 minutes West along said road 4.36 chains, thence West 17.28 chains, more or less, to the place of beginning, containing 7.58 Acres, more or less.

for the payment to the said Harry B. Hill of the said sum of \$1029.20, with interest thereon at the rate of six per cent per annum from the 29th day of October, 1919 until paid, together with all proper costs and disbursements of this action, and the costs of the sale of said premises, and that said mortgage be foreclosed and said property sold by the marshall in the manner by law provided, and that upon a confirmation of said sale a certificate of purchase issue to the purchaser at said sale, and that the complainant Kathryn Struett, formerly Katherine Smith, and any and all persons claim-

ing or to claim by, through or under her, he and they are forever barred and foreclosed of and from any and all right, title, interest or equity of redemption in or to said premises, or any part thereof.

Dated this 20th day of November, A. D. 1919.

EDWARD E. CUSHMAN,  
Judge

Filed November 20, 1919.

And Afterwards, to-wit, on the 18th day of May, 1920, there was filed in the District Court of the United States for the District of Washington, Southern Division a

### PETITION FOR APPEAL

in words and figures as follows, to-wit:

(Title Omitted)

The complainant above named, conceiving herself agrieved by the decree and judgment made and rendered in the above entitled Court in the above entitled cause, and entered therein, on the 20th day of November, 1919, at the regular July term, 1919, of said Court, in favor of the respondent, in the above entitled cause, and against the said complainant therein, wherein and whereby it was ordered, adjudged and decreed that the

Bill of Complaint herein be, and the same was dismissed, and that the said respondent have and recover of and from said complainant the sum of One Thousand and Twenty-nine and twenty hundredths (\$1,029.20) dollars, with interest at the rate of six (6) per cent per annum from the 29th day of October, 1919, until paid, and also costs and disbursements of the suit, and that certain deed between Kathrine Smith, as grantor and Harry B. Hill, as grantee, recorded in Volume 120 of the Deed Records of Clarke County, Washington, at page 587 thereof, conveying the premises therein described, was a mortgage to secure the payment of the sum of money with interest hereinbefore set forth, and that said mortgage be foreclosed, and said property be sold by the Marshal in the manner provided by law, does hereby appeal from the said judgment and decree and from the whole and from each and every part thereof, to the United States Circuit Court of Appeals for the Ninth Circuit.

And the said complainant files herewith her assignment of errors, asserted and intended to be urged by her, upon this, her said appeal.

And the said complainant prays that this, her petition for said appeal, and her said appeal may be granted and allowed, and that citation issue herein as provided by law, and that a transcript of the record, proceedings and papers, upon which said judgment and decree was



so made and entered, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Circuit; and also that an order be made fixing the amount of security or bond, which the said complainant shall give and furnish upon this, her said appeal, to the effect that she shall prosecute her appeal and will answer all damages and costs if she fail to make her plea good on appeal, and your petitioner will ever pray.

KATHRYN STRUETT,  
Complainant and Appellant

WM. P. LORD,  
Solicitor for Appellant

Filed May 18, 1920.

And Afterwards, to-wit, on the 18th day of May, 1920, there was filed in the District Court of the United States for the District of Washington, Southern Division, a

### CITATION

in words and figures as follows, to-wit:

(Title Omitted)

United States of America, ss.

To Harry B. Hill, defendant above named,



To Harrison Allen and to John W. Roberts, attorneys for the defendant above named:

### GREETING

Whereas, Kathryn Struett, the complainant in the above entitled suit, has appealed to the United States Circuit Court of Appeals for the Ninth District from <sup>decree, and</sup> the judgment rendered and made in the above entitled court in the above entitled cause, and entered herein on the 20th day of November, 1919, in favor of the respondent in the above entitled cause, and against the complainant therein, and the said appeal has been allowed and the security by law has been given;

Now, Therefore, you and each of you are hereby cited and admonished to be and appear in the United States Circuit Court of Appeals for the Ninth Circuit at San Francisco, in the State of California, within thirty days from and after the date of this citation to show cause, if any there be, why the said judgment and decree appealed from should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Edward E. Cushman, Judge of the District Court of the United States for the District of Washington (Southern Division) with the seal of said Court hereunto affixed this 17<sup>th</sup> day of May, 1920.

EDWARD E. CUSHMAN,

Judge of the District Court of the United States for  
the District of Washington (Southern Division).

United States of America	}	ss.
District of Washington		

Service of the within citation is hereby admitted this  
18th day of May, 1920.

JOHN ROBERTS,  
Of Attorneys for Respondents

Filed May 18, 1920.

And Afterwards, to-wit, on the 18th day of May,  
1920, there was filed in the District Court of the United  
States for the District of Washington, Southern Divi-  
sion, an

### ASSIGNMENT OF ERRORS

in words and figures as follows, to-wit:

(Title Omitted)

The complainant above named complains of the  
judgment and decree made and rendered in the above  
entitled cause in the above entitled Court, and entered  
therein, as alleged in her petition for an appeal there-  
from, and of errors in the proceedings in this cause and  
in connection with her said appeal she will assert and  
rely upon the following assignment of errors:

## I.

The District Court of the United States for the District of Washington, Southern Division, erred in sustaining the respondent's objection to the receiving and admitting in evidence of certain exhibits referred to in the transcript of testimony herein.

## II.

The Court erred in making Findings of Fact in favor of the respondent and not in favor of the complainant.

## III.

The Court erred in finding that the complainant failed to establish the allegations of her complaint and was not entitled to recover in this action, and in dismissing the complainant's complaint.

## IV.

The Court erred in finding and in entering judgment against complainant and in favor of respondent for the sum of One Thousand (\$1,000) Dollars and the further sum of twenty-nine and twenty hundrdeths (\$9.20) dollars with interest thereon at the rate of six (6%) per cent per annum from the 29th day of October, 1919, and in entering judgment and decree therefor in favor of the respondent and against the complainant.

## V.

The Court erred in finding that the certain deed filed for record on the sixth day of June, 1917, in the Records of Clarke County, Washington, and recorded in Volume 120 of the Deed Records at page 587 thereof, wherein Kathrine Smith was grantor and Harry B. Hill was grantee, conveying the following described premises in Clarke County, Washington, to-wit:

Beginning 37.42 chains East and 15.68 chains South of the Northwest corner of Section 10, Tp. 2, North Range 1 East W. M., running thence South 4.32 chains to the Southeast corner of the Hannah & Tyszkiewicz tract, thence East 17.81 chains, more or less, to the center of the County road, thence North 7 degrees and 45 minutes West along said road 4.36 chains, thence West 17.28 chains, more or less, to the place of beginning, containing 7.58 Acres, more or less.

was given by the complainant to the respondent to secure him the repayment of moneys advanced, which the Court found to be in the sum of \$1,029.20 and was a mortgage to secure to respondent the payment of said sum with interest and costs of this suit, and in entering a decree declaring said mortgage to be a lien upon said described real premises, and directing that the same should be foreclosed and said property sold by the marshal in the manner provided by law, and in further or-

dering and adjudging that upon a confirmation of such sale a certificate of purchase issue to the purchaser, and that the complainant be forever barred and foreclosed of any and all right, title, interest or equity of redemption in or to said premises.

## VI.

That the decree is against the manifest weight of evidence.

## VII.

The Court erred in holding and deciding that the complainant was not entitled to the relief prayed for in her complaint herein.

Wherefore this complainant prays that the said judgment and decree made, rendered and entered herein in favor of said respondent and against the said complainant, as aforesaid, be reversed and held for naught, and that a judgment and a decree be rendered and entered herein in favor of the said complainant and against the said respondent, as prayed for in her Bill of Complaint herein, and that the said complainant may have a decree for such other and further relief as may be in conformity with the law and practice of this Court, and as may be proper in the premises.

WM. P. LORD,  
Solicitor for Appellant

Affidavit of service by mailing omitted.

Filed May 18, 1920.

And Thereafter, to-wit, on Tuesday, the 18th day of May, 1920, in the District Court of the United States for the District of Washington, Southern Division, before the Honorable Edward E. Cushman, judge of said District Court, in equity sitting, the following proceedings were had, to-wit:

(Title Omitted)

Now, on this 18th day of May, 1920, the above entitled cause coming on regularly to be heard, on the petition of the above named complainant, praying that an appeal be allowed herein to review the judgment and decree herein, and praying that an order may be made fixing the amount of the security or bond herein, which the said complainant shall give and furnish upon her said appeal for the prosecution of the appeal with due diligence and to pay the costs and disbursements which may be awarded against her on said appeal in event said decree or any part thereof in this cause be affirmed; and the said complainant having filed herein and presented to this Court her said petition, and therewith an assignment of errors relied upon and intended to be urged by her upon her said appeal; and it appearing to the Court that the said complainant is entitled to said appeal and said order; now, therefore, on motion of

Wm. P. Lord, solicitor,

It Is Ordered that upon the said plaintiff entering into and giving a bond for the amount, and conditioned as hereinafter mentioned, that the said appeal be and the same is hereby allowed, and that citation issue herein, as provided by law, and that a transcript of the record, proceedings and papers upon which said judgment and decree was so made and entered duly authenticated, be sent to the United States Circuit Court of Appeals for the Ninth Circuit; and

It Is Further Ordered that the amount of the cost bond on appeal is hereby fixed by the Court in the sum of Seven Hundred Fifty (\$750) Dollars, but said bond does not have the effect to stay execution herein.

Dated this 18th day of May, 1920.

EDWARD E. CUSHMAN,  
Judge

Filed May 18, 1920.

(Title Omitted)

Now, at this time, May 18, 1920, on motion of counsel for complainant above named for an order of the above entitled Court enlarging and extending the time for the appellant above named to file record on appeal, and appearing to the Court that good cause is shown and exists for such order;

It Is Ordered, that the time for the said complainant to file the record of appeal in the above entitled cause with the clerk of the United States Circuit Court of Appeals for the Ninth Circuit at San Francisco, California, and to docket the said cause with said clerk, be and the same is hereby enlarged and extended for a period of 17 days up to and including the first day of July, 1920.

Dated this 18th day of May, 1920.

EDWARD E. CUSHMAN,  
United States District Judge

Filed May 18, 1920.

And Afterward, to-wit, on the 27th day of November, 1920, there was duly filed in the District Court of the United States for the District of Washington, Southern Division, two

### STIPULATIONS

in words and figures as follows, to-wit:

(Title Omitted)

It is hereby stipulated by the attorneys for the respective parties, as follows:

1. That the time within which the appellant has to



file transcript on appeal in the above entitled Court upon appeal from the United States District Court for the District of Washington, Southern Division, may be enlarged and extended up to and including the 20th day of November, 1920.

2. That Edward Cushman may approve and certify to the transcript of the testimony and exhibits now on file in the office of the clerk and that the testimony of the witnesses in the above entitled cause need not be reduced to narrative form, in order to preserve the true character and meaning of the testimony.

Dated this 23rd day of October, 1920.

WM. P. LORD,

Solicitor for Appellant

ROBERTS & SKEEL,

Solicitors for Appellees.

Not waiving jurisdictional questions heretofore raised.

(Title Omitted)

It is hereby stipulated and agreed by and between the parties hereto, in order to facilitate the appeal herein, as follows:

1. That the appellant will prepare the transcript of record on appeal in the above entitled suit, and print the

same, and that the clerk of the District Court of the United States may certify that the printed transcript is in accordance with the stipulation of counsel, without comparison with the original record, pursuant to new rule of the Court of Appeals, making effective the Congressional Act of February 13, 1911, but it is expressly understood and agreed that prior to the delivery of said record to the printer that the same shall be delivered to the attorney for the appellee for inspection and that thereafter, before the transcript of record is delivered to the Clerk of the District Court for certification, said record shall be delivered to the attorney for the appellee for comparison and that the record shall bear certification of the attorney for the appellant that he has compared the printed record with the original record and that the same is true and correct copy thereof.

2. That the Court may make an order extending appeallant's time to the 10th day of December, 1920, as time within which to docket this cause and file transcript of record with the clerk of the Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California.

Dated this 13th day of November, 1920.

WM. P. LORD,

Solicitor for Appellant

ROBERTS & SKEEL,

Solicitors for Appellee

Filed November 27, 1920.

And Thereafter, to-wit, on the .....day of December, 1920, in the District Court of the United States for the District of Washington, Southern Division, before Honorable Edward E. Cushman, judge of said District Court, in equity sitting, the following proceedings were had, to-wit:

(Title Omitted)

Based on stipulation herein:

It Is Oredered, that the time within which to file transcript on appeal and docket this cause with the clerk of the United States Circuit Court of Appeals, for the Ninth Circuit, at San Francisco, California, be and the same is hereby extended for a period of ten (10) days from the expiration of the present time.

Dated this.....day of December, 1920.

EDWARD E. CUSHMAN,  
Judge.

And Thereafter, to-wit, on the 26th day of August, 1920, there was duly filed in the District Court of the United States for the District of Washington, Southern Division,

## TRANSCRIPT OF TESTIMONY

in words and figures, as follows, to-wit:

(Title Omitted)

Be It Remembered, That heretofore and on the 29th day of October, 1919, the above entitled matter coming regularly on for hearing before the Honorable F. E. Cushman, one of the judges of the above entitled court, and

The Plaintiff being present in person and represented by her attorney, Wm. P. Lord, Esq., and

The Defendant being present in person and represented by his attorneys, Roberts & Skeel,

The following proceedings, among others, were had and done, to-wit:

*Kathryn Struett*

## DIRECT EXAMINATION

BY MR. LORD:

Q. Where were you born?

A. In Clark County, three miles and a half from Vancouver.

Q. What was your maiden name?

A. Kathryn Anderson.

Q. What was your father's name?

A. William Reese Anderson.

Q. Did he take a donation claim, donation land claim in Clark County?

A. Yes, sir.

MR. ROBERTS: I think that is all immaterial. The property was hers, she deeded it.

COURT: It is answered. There is nothing before the court, except you sounded a warning to counsel. There is nothing for the court to rule on.

Q. Mrs. Struett, you were raised in Vancouver, were you?

A. Yes, sir.

Q. How old are you now?

A. Forty years of age.

Q. Are you acquainted with the defendant or respondent, Harry Hill?

A. Yes, sir.

Q. How long have you known him?

A. About seven years.

Q. When did you first come in contact with him?

A. 1913, I think that was, the 1st of May.

Q. Where did you meet him?

A. Where did I first meet him?

Q. Yes.

A. Rainier, Oregon.

Q. What was his business?

A. Well, he was a mechanic.

Q. What was his business?

A. Same as it is now.

Q. I wish you would talk louder.

A. He was a mechanic and worked at Altoona when I first met him, where he is now, the last I knew of him.

Q. Was he in prosperous circumstances?

MR. ROBERTS: That is objected to, as immaterial.

THE COURT: Overruled.

A. I guess he did.

Q. What is that?

A. Beg pardon.

Q. Was he in prosperous circumstances?

A. Evidently he was.

MR. ROBERTS: She said he was a mechanic.

WITNESS: He seemed to be.

COURT: That is very indefinite.

Q. I will ask you what his circumstances were?

A. I did not know his business thoroughly, you know, but he always seemed to be in good circumstances as far as I know.

Q. Was he married at the time you met him or not?

A. Well, yes he was married.

Q. Was his wife living with him or not?

A. No.

Q. Do you know whether he had been divorced from his wife?

A. No, sir.

Q. You do not know?

A. I do not know, because he said not.

Q. He told you he was not divorced?

A. Yes, that is what he said.

Q. When did he inform you he was not divorced from his wife?

A. Well, as soon as I met him, that is right after.

Q. How long did your acquaintance with him continue?

A. Well, from the time I met him, February '18 he was at my house.

Q. During that time what representations if any did he make with respect to his marital status?

MR. ROBERTS: I object to this as incompetent, irrelevant and immaterial.

THE COURT: Overruled.

Q. What did he say with respect to whether he was married or not?

A. Well, in regard to marrying me he said he could not until he got a divorce, and he was not divorced yet.

Q. Did that in any way effect your relations with him?

A. Yes, certainly did, because I treated him as an honest, up-right man in every respect, as much as I would my father or my brother.



Q. What did he say in respect to that? Going back to the first part of your relations, what did he say in respect to eventually marrying you?

A. Well, in regard to the home, I never asked him to lift the mortgage at all.

A. I am not talking about the mortgage at all.

A. I know, but I am trying to there——

Q. I mean in respect to your relations with him, what did he say about marrying you?

MR. ROBERTS: I object to that as incompetent, irrevelent and immaterial.

THE COURT: Overruled.

Q. Go ahead, what did he say with respect to marrying you, during any time of your relations, between the 13th and 18th?

A. He wanted a place to make a home for us, when he got it so that he could marry me.

Q. So that he could marry?

A. Yes.

Q. Did he represent to you that he would eventually be in a condition where he could marry you?

A. Yes, sir.

MR. ROBERTS: I object to that and ask it to be stricken.

THE COURT: Objection sustained; too leading.

Q. Mrs. Struett, you testified that you got in touch with Mr. Hill in 1913?

A. Well, it was 1915 when he had the mortgage——

Q. Anterior to the time he paid the mortgage, what were your relations with him?

A. The same as it continued until 1918, in February.

Q. How long had you known him when the mortgage was paid?

A. Nearly two years.

Q. Where were you living in 1913?

A. Rainier.

Q. How long did you live there?

A. Well, about a year, about in the neighborhood of a year.

Q. When you left Rainier where did you go to?

A. Aberdeen.

Q. In this state?

A. Aberdeen, Washington.

Q. How long did you remain there?

A. Well, in the neighborhood of a year.

Q. Where was Mr. Hill in the meantime?

A. Well, he came down to Aberdeen on his way East.

Q. How often did he see you while you were in Aberdeen?

A. Once—twice.

Q. Came to see you twice?

A. Yes.

Q. What year was this in?

A. 1914.

Q. During this time was he friendly with any other member of your family?

A. Yes, very good friends.

Q. With whom?

A. With my sister and brother-in-law, good friends

Q. How intimate friends was he with your sister?

A. Well, supposed to be a gentleman. They understood him as a gentleman, a friend; we spoke of him as a friend.

Q. Your sister married at that time, Mrs. Struett?

A. Yes, sir.

Q. What were your relations up until 1914?

MR. ROBERTS: I object to that as indefinite and undertain.

THE COURT: Objection overruled. Answer.

A. Well, same as when I met him.

MR. ROBERTS: I do not understand you.

A. Well, from the start always the same until he got married.

Q. How intimate were you with him, explain that to the court?

A. Well, not any more than a wife, —that is everything I guess.

Q. You mean to say from the start——

MR. ROBERTS: I would like to have it understood that all this line of examination is over my objection. I do not think all this should go into this case.

THE COURT: It will be so understood. After this last answer there is no use going into particular details of that relationship, except the period over which it extended, as far as this case is concerned.

Q. How often did you see him in 1915?

A. About sometimes every two weeks, not longer than three.

Q. Where were you living?

A. In Vancouver, out on the old homestead.

Q. And where was he living?

A. Cascade Locks, Oregon.

Q. He came down to see you about once in two weeks?

A. Yes.

Q. What did he do in respect to supporting you, if he did anything?

MR. ROBERTS: I object to that as incompetent, irrelevant and immaterial, not an issue under the pleadings.

THE COURT: Well, I understand that, but the objection will be overruled. Answer.

Q. What was he doing in the way of giving you money or anything of that kind?

A. Well, he gave me a few dollars, yes, when he would come down.

Q. How much would he give you at a time?

A. At that particuar time not more than ten dollars, not more than ten.

Q. Were you sleeping with him at that time?

A. Yes.

Q. How often did he make you these gifts?

A. Well, not very often, except—I never put that down. I do not know just how often he did.

Q. What were your feelings towards him?

A. Just like I would a husband.

Q. How is that?

A. Just as I would my own husband, everything, everything in the world.

Q. Did that in any way cause you to perform or do any act showing any particular confidence in him?

A. Yes, because I thought he was a gentleman, meant every word he told me about what he intended to do.

Q. What did he tell you during this time?

A. Well, to have a home, and he wanted to clear the

land up there and everything and make a home of it.

Q. (By the Court) Clear it, what you mean, clear the deed?

A. No, not the indebetness, but part of it is unimproved you know.

MR. ROBERTS: I am not sure, I understand it to mean clear the stumps?

A. Well, it is not clear.

Q. (By the Court) When you used the word "clear" you mean to improve the land?

A. Yes.

Q. What indebetness was against this property?

A. Five hundred dollars.

Q. What was done about this mortgage or indebetness?

A. Well, he paid it off, that is all.

Q. Paid it off you say?

A. Yes, he paid the mortgage.

Q. Did any one request him to pay the mortgage?

A. No, sir, I did not. I never asked him, not for a five cent piece, never.

Q. What did he say about it to you when he paid it?

A. What did he say about it?

Q. Yes.

A. Well, I was a widow at the time and he told me not to worry about anything. I didn't have any income in any way, and he told me not to worry at all, he would see that it was all right, and he cleared it for me, absolutely. I did not want him to have anything to do with it at all, and I wanted to give him a mortgage on it, and he did not want it. This \$250 that he loaned me, I wanted to give that back to him, and he says, no, he says, keep it, you may need it. I offered that to him three or four times, because when I sold the rooming house I wanted to pay him back the money he had loaned me on that.

Q. (By the Court) You say when you sold the rooming house?

A. Yes, sir, that is the money he had loaned me, that if that \$200. It was \$150, is what he gave me.

Q. How much did he give you?

A. One hundred and fifty dollars.



Q. What became of the promissory note that evidenced this obligation?

MR. ROBERTS: You mean on the land?

A. I think Mr. Hill has it.

MR. ROBERTS: Yes, we have it.

Q. Did you give him any evidence of indebtedness of any kind for paying this mortgage off, any note or security?

A. No, sir.

Q. What?

A. No, sir, he would not accept any.

Q. And what did he tell you the purpose of paying it off was?

A. For myself.

Q. As what?

A. As a gift I suppose, that was all. He would not receive anything, would not even take a mortgage on it.

Q. This was in what year?

A. This was in 1915.

Q. Where were you residing then?

A. Vancouver.

Q. How often had you seen him at the time this Kramer mortgage was paid off?

A. How often?

Q. Yes.

A. About three weeks.

Q. Over a period of six month's time how often would he come in to see you?

THE COURT: The witness said about once in two weeks during 1915, already.

MR. ROBERTS: She said she saw him twice during the year while she was in Aberdeen.

THE COURT: Yes, that was in 1914 she said.

Q. After paying off this mortgage, how long did you continue to associate with him?

A. Until,—well, he went to Idaho before he came to see me in Portland, in February, 1917.

THE COURT: The question is not answered yet.

A. He was in Idaho before he came, whenever he come.

Q. This association was continued until when?

A. Well, up to the time he was married; just a few weeks before he was married.

Q. (By the Court) Have you changed that to weeks?

A. Yes, because he went to California in February, he went to California, and if I understand it correctly he was married in May or April, 1918.

Q. (By the Court) You change a few weeks to a month, do you?

A. Yes.

Q. You deeded this property at what date?

A. I could not tell you that exactly.

MR. ROBERTS: I have the deed here. (Hands deed to Mr. Lord).

Q. I hand you the deed, Mrs. Struett; is that your signature?

A. Yes, sir. He told me when I made that out, he says, make it out exactly as the deed you have yourself, you have the original and he says, you can keep the original, but have a deed made out just the same as the one you have.

Q. What purpose was this deed for?

MR. ROBERTS: I object to it.

THE COURT: You can say what was said.

MR. LORD: That is probably asking a conclusion. I will withdraw that question. What was said at the time of making this deed?

The deed was offered and received in evidence, and marked as Plaintiff's Exhibit 1.

A. He kept it quite a while before, and I do not know just when he had it recorded, but he never would have it recorded; he said it was for me alone, that was why he paid the mortgage off; so that I could have the home.

Q. How long after paying the mortgage off was this before——

A. How is that?

Q. How long after paying off this mortgage was this deed made?

A. Oh, that was paid in '19, and near 1917, I think—in the year 1917, I think the latter part of it, if I am not mistaken.

Q. What did he say, what representations or state-

ments did he make to you that induced you to make that deed?

A. He just says that I could have it for myself and that we would make a home of it, that there would not be a squabble over the property and we would have a home some day.

Q. Did he say anything in respect to the payment of this Kramer mortgage?

A. No.

Q. Your relations, after payment of this Kramer mortgage, became more difficult or not?

A. How is that?

Q. Were your relations after the payment of this Kramer mortgage changed?

A. Just the same.

Q. Did you see him more often?

A. No, not more often, whenever he could get away from his work to come to see me, that was most every two weeks.

Q. And where were you living then?

A. Part of the time I was living at Vancouver and part of the time in Portland.

Q. Did he ever hold you out as his wife?

A. Yes, sir.

MR. ROBERTS: We object to that as incompetent, irrelevant and immaterial, calling for a conclusion.

MR. LORD: The purpose of it, your honor, is to show the relationship between these parties, so as to throw some light upon the purpose of this conveyance to him, her trust and confidence in him.

THE COURT: If you brought somebody else here to show that he had acknowledged it, it might be corroborating evidence, but after what the plaintiff has said--

THE WITNESS: We have been registered as man and wife in Portland.

MR. ROBERTS: I ask that that be stricken.

THE COURT: Motion denied. This is being tried before the court. Unless dispute arises over that phase of the case why it does not add anything more. She has said enough to show the intimacy of the relationship. To go over the details of it does not add anything to it so far as helping me in this case is concerned. After what she has said if they registered in a hotel as man and wife it would not help me any more in determining whether this was a mortgage or whether it was a gift,—if they registered in one or did not register at all. Of course if it was disputed that was the relation-

ship that might be sustained.

Q. You were intimate together?

A. Yes, sir.

MR. ROBERTS: I object to that.

THE COURT: I do not think you need pursue that any further. You have made it about as strong as you can. She said they were no more intimate than man and wife. I do not know what advantage there is in ringing the changes on these details.

Q. How long did that intimate relation exist? Never mind, I will withdraw the question. That is all.

### CROSS EXAMINATION

BY MR. ROBERTS:

Q. Now then, Mrs. Struett, you had a sister living at Rainier, Mrs. Kappel?

A. Yes.

Q. Mr. Hill boarded with your sister?

A. Yes.

Q. At Rainier, Oregon?

A. No, when I was there, no he did not.

Q. That is where you met him?

A. I met him there, but he was not boarding there. He was living at Altoona when I met him.

Q. You met him at the home of your sister, Mrs. Kappel?

A. Yes.

Q. That was in 1912?

A. In the latter part, yes in June.

Q. In June, 1912?

A. Yes, sir.

Q. Now, you at that time were Mrs. Smith?

A. Yes.

Q. And Mr. Smith was there, you were living with your husband?

A. Yes.

Q. Now, then, you say that Mr. Hill told you that he likewise was married?

A. We were.

Q. That he was likewise married, that he was mar-



ried,—that is what you said he told you?

A. Well, he had been, but he had not been living with his wife for about 11 or 12 years, probably longer; just what time I do not know, but a number of years.

Q. I understood you to say that you understood he was a married man?

A. He was, but left his wife, but not divorced, so he told me.

Q. You knew then that if he was a married man and not divorced, he could not marry you, didn't you?

A. Well, but he always said that he could any time he wanted to.

Q. And you knew that you were a married woman, living with your husband, and could not marry, didn't you?

A. Well, I never expected to at that time, never thought of such a thing.

Q. Now, this intimacy that you have stated existed between you and Mr. Hill was begun while you were a married woman living with your husband, didn't it?

A. Well, it was only about a month that my husband was alive he ever knew him or saw him.

Q. When did your husband die; 1914, didn't he?

A. Yes.

Q. And your relationship with Mr. Hill began in 1912?

A. Well, that was in the latter part, you understand.

Q. Latter part of 1912 and your husband did not die until 1914?

A. Yes.

Q. So during all of that period you did not of course think about marrying Mr. Hill?

A. Why, I certainly did not.

Q. Now Mr. Hill was a working man?

A. Mr. Hill was a working man?

Q. Yes.

A. I guess he was, yes.

Q. And then later you went to Aberdeen because your sister

Q. And you were there a year?

A. About a year, yes.

Q. And during all that year Mr. ~~Harry~~ Hill only saw you twice, you say?

A. Well, he came there on his way East, and then he came down there and brought me back up to Vancouver on Christmas day that same year.

Q. Now, that time when he was on his way East, at Aberdeen he loaned you, did he not, \$83 to pay interest on the mortgage on that land?

A. Yes.

Q. That is correct?

A. Yes.

Q. Interest had defaulted?

A. He gave it to me. I never asked him for it.

Q. That was when you got the first money any how?

A. Yes.

Q. Now that is at Aberdeen, on his way East, when he came through Aberdeen?

A. Yes.

Q. And he was merely off there how long,—just

simply stopped off on his way East, didn't he?

A. Few days, yes. Came that way, he said, purpose to see me, that is what took him on that route.

Q. I didn't catch that last remark.

A. He came that way purpose to see me.

Q. I heard that.—but did you get it, Mr. Reporter?

REPORTER: That is what took him on that route.

Q. He was working over at Altoona, Washington, as a mechanical engineer, was he not?

A. Yes.

Q. And then he got the job up at Cascade Locks?

A. Well, I do not know just when he got that position up there.

Q. It does not matter?

A. He went there, yes.....

Q. That was where he went next, was it?

A. Yes, as far as I know.

Q. Now, in the meantime you had gone to Portland,

was that the idea?

A. From Aberdeen?

Q. Yes.

A. No, sir.

Q. Where did you go.

A. Vancouver.

Q. Vancouver? Well, you went to Portland later?

A. Yes.

Q. Now you say that once in two or three weeks he would come down from the Locks?

A. Well, he came down every opportunity he could away from his work.

Q. It was only when he could get away from his work as a rule that he was down at all, was it?

A. Well, I don't know what you would call that. He said sometimes he left his work to come to see me.

Q. Then he went over to Idaho. How long was he over in Idaho?

A. Well, I would have to, I could not tell you exactly how long that was.

Q. He did not come to see you while he was in Idaho, did he?

A. I don't just know whether——yes, he came to see me, but whether he went back or not, I do not know.

Q. That is what I mean, did he come over from Idaho and then go back?

A. Well, I will have to think about that.

Q. Better think it over?

A. No, I think he stayed.

Q. What?

A. I think that he stayed.

Q. Then he stayed when he came back?

A. I think so, yes.

Q. Then he didn't come from Idaho to see you?

A. He came here and came back to be near me, that is what he said in his letters.

Q. Well, then, he went to California and was down there three months?

A. Well, he went in February, I think about the 25th of February, along in there sometime.

Q. He didn't come back from California while he was down there, did he?

A. Not until he came up here and married this lady that is his wife now.

Q. Well, you are even, you were married, too?

A. Yes, but he promised me he would never marry anybody.

Q. You were married first?

A. No.

Q. You beat him to it, didn't you?

A. No, sir, I did not. I never knew he was married until a year later.

Q. Now, you say that at this time when he came to see you he always gave you some money, about ten dollars?

A. Over \$5.00. Sometimes he did and sometimes he did not.

Q. Then he paid for what he got each time, didn't he?

A. Well, I—

MR. LORD: I think that's a conclusion.

COURT: Objection sustained.

Q. Well, now, you and Mr. Hill never at any time lived together, did you?

A. Well, I don't know what you would call it. He claimed my home as his home whenever he came to Portland. He called it his home. He made it his home.

Q. You mean he went to your room to see you?

A. Certainly that was his home. Whenever he came over from the Locks or wherever he was, that was his home when he came to Portland.

Q. He never maintained at any time any place any kind of an establishment?

A. In Portland?

Q. Or any place, yes?

A. I hardly know what you mean by that. He did not stay at any one of the hotels as long as I had the rooming house; he made it his home the same as a husband would.

Q. When you bought this rooming house you run that?

A. Yes.



Q. And you were arrested a couple of times for lewd conduct while you were running it, weren't you?

A. No, sir.

Q. What were you arrested for?

A. I was not arrested at all.

Q. You say that you were not?

A. No, sir. Running that rooming house? No, sir.

Q. You were not arrested in the apartment, in Portland?

A. No, sir, never.

MR. LORD: I object to that as immaterial, unless it is a felony. If it is merely a matter of sporting house stuff, I object as not material.

COURT: She denies it, and objection overruled.

Q. Now, let's see if there is some misunderstanding?

A. There must be some misunderstanding.

Q. Now, you were living there in the rooming house with Mr. Struett, whom you have since married?

A. No, I beg your pardon.

Q. He was there?

A. It does not make any difference. He was paying for his room the same as the other roomers were.

Q. Do you men to say that you and Struett were not arrested?

A. Yes, I do.

MR. LORD: I object to this question.

A. Yes, sir, I do, emphatically.

MR. LORD: Whether this was before or after this conveyance would make a difference. If it was after and subsequent to this conveyance, it could not throw any light upon this transaction whatever.

THE COURT: Objection overruled.

MR. LORD: Exception.

Q. Well, was he arrested?

A. No, sir.

Q. Neither of you?

A. No, sir.

Q. Well, you don't know—

MR. LORD: I object and move to strike out whether or not Mr. Struett was arrested. It has no bearing on the question of whether this conveyance was a gift or not, or what the situation was between the plaintiff and defendant.

THE COURT: Motion denied, anything affecting the credibility of the witness would be proper.

MR. LORD: Exception.

WITNESS: I am telling the truth about it.

MR. LORD: I do not see what the moral or sexual relations have to do with the credibility of the witness. It might show that they are not the people they ought to be, but it has nothing to do with their truth and veracity.

THE COURT: It might have. Objection overruled.

Q. When were you married to Struett?

A. It will be a year the 31st of this month.

Q. That would be the 31st of October, 1918?

A. Yes, sir.

Q. Now, when did you get this rooming house?

A. In 1916.

Q. That is in Portland, is it?

A. Yes.

Q. When did Mr. Struett begin to live at the rooming house?

A. Now, I think that was in November, November or latter part of October.

Q. 1916?

A. Yes.

Q. (By the Court): What time in 1916?

A. Either the latter part of October—

COURT: That is the way I understood it.

Q. Now, Mrs. Struett, as to this mortgage which he paid, do you know how much he paid?

A. Well, no, I could not say just exactly. I never kept a—No, not right now, I could not say.

Q. You do not know how much he paid to have that transferred?

A. Do you mean by the month or altogether?

Q. No, I mean what he paid to satisfy the mortgage. Mr. Hill is not claiming anything here at all for the

money he gave you, the five and ten dollars you are talking about; we don't claim anything for them. I am talking about the money he paid for the mortgage. You do not know how much he did pay?

A. Well, he paid it himself. It was five hundred dollars and what there was due—

Q. You said he paid it in 1917?

A. Oh, no, I said he paid it in 1915, was when he paid the mortgage—1915.

Q. You said once he paid it in 1917?

THE COURT: I think he paid it in 1915 and got the deed in 1917.

MR. LORD: 1916.

Q. Now, you knew that mortgage was being foreclosed?

A. Yes.

Q. And that in order to redeem or pay that he had to pay the accrued interest and court costs, attorney fees and back taxes with penalty and interest?

A. Well, the taxes—yes, that is right.

Q. And if he says that he paid \$801 to satisfy the

whole thing, you do not know whether that is correct or not?

A. No, I do not.

Q. Now, then, about this money which he loaned you at the time you bought the rooming house, you said once \$250 and once \$200 and once \$150. Now, which was it?

A. It was \$150 he gave me. The rooming house cost \$300 and he gave me \$150.

Q. You claim that he gave you that?

A. That he gave me, yes, sir.

Q. \$150.

A. Yes, sir.

Q. At the time you gave the deed you received back a written agreement, didn't you?

A. No—Of what?

Q. About the purpose for which the deed was given?

A. No, sir.

A paper is marked for identification as Defendant's identification "A."

Q. I hand you this instrument marked Defendant's identification Exhibit "A" and ask you to look at that and state if you did not receive that instrument or an exact duplicate of it?

A. I think you have it (referring to Mr. Lord). This was given to me I think just before he went to California.

Q. Just before he went to California?

A. He mailed it to me when he was living in Portland.

Q. You received it?

A. But he never kept his word. When I made the trip down to see him, to pay the \$500 in cash, when he wanted \$1,000 to call the deal square. I said, all right, I'll pay you \$500 and may be the next day I will give you the balance and settle it for a thousand dollars, and the man promised to me in the bank on Monday, and I went there I don't know how many times and he never was there, and not a paper of any kind, and I have nothing, not a thing, after he made me this promise. I had the \$500 to pay the cash.

Q. And the balance of the thousand you were going to pay later?

A. I could have had it the next day as I told him. I

think you have the duplicate of this (addressing Mr. Lord).

MR. ROBERTS: (addressing Reporter) Did you get her statement, the attorney had the duplicate of that Exhibit A? I offer this in evidence.

THE COURT: It will be admitted.

MR. LORD: I object to that. He is only offering the copy and he admits in open court I have the original.

MR. ROBERTS: Excuse me. Give me the original please.

THE COURT: You are offering the original?  
(Mr. Lord placed paper on table before court).

MR. LORD: I am not offering anything. I am producing the original.

THE COURT: You are demanding the original?  
(Mr. Roberts took up papers produced by Mr. Lord).

MR. LORD: Don't remove those papers. Those papers belong to me.

MR. ROBERTS: I withdraw the copy and offer the original.

THE COURT: The copy being withdrawn, the



original produced by the plaintiff is admitted.

**MR. LORD:** No objection to the admission of the original in evidence.

**THE CLERK:** I will mark this "A" just the same as the other.

Paper received in evidence and marked as Defendant's Exhibit "A".

**THE COURT:** The consideration is set forth in the deed, is it?

**MR. ROBERTS:** Yes, sir. The deed was not offered in evidence. It has been marked as Defendant's Exhibit. I will offer it in evidence because of that fact.

**THE COURT:** It is admitted.

Thereupon said Deed was marked as Defendant's Exhibit.

**MR. ROBERTS:** The consideration named in the deed is \$1000, and that instrument (Exhibit A) says the consideration named in the deed with other indebtedness, such as taxes and assessments; and that is all we are claiming here in this action, is this amount named in this deed with interest and taxes paid by Mr. Hill. That is all.

**THE COURT:** The \$801 you mentioned a while

ago were made up from what then?

**MR. ROBERTS:** The money he loaned to buy the apartment house.

**THE COURT:** That testimony is not in, your testimony on that point has not been put in. She says \$150.

**MR. LORD:** She says \$150 and he says it is \$200.

**MR. ROBERTS:** Oh, no; the interest would make it more than that.

**THE COURT:** This is December 22, 1916. How long would that be after the redemption.

**MR. ROBERTS:** To fix that I will offer this mortgage at this time.

**THE COURT:** Admitted.

Thereupon said mortgage was marked as Plaintiff's Exhibit "B."

**WITNESS:** May I see the deed there?

**MR. ROBERTS:** Now the date of the satisfaction of this mortgage, if the court please, is the 22nd day of October, 1915. I was mistaken when I said in the opening to your honor—you asked whether this was for money that had been advanced or subsequent advances. It had all been advanced except the taxes since paid.

MR. LORD: I move to strike out the statement of counsel with respect to the affirmative defense.

THE COURT: There is nothing except withdrawing the statement already made.

WITNESS: It is recorded 1917, June 6th, but where does it say for the indebtedness, where does it say—

COUNSEL: Right here (indicating).

WITNESS: Well, he has had that put in there, because we never put it in the deed at all, never. There was nothing like that in the deed, not a thing.

Q. You are holding the deed in your hand?

A. Yes.

Q. Now, you don't remember anything about that? That has not anything of the appearance of having been inserted there?

A. Why, right here, yes.

Q. Well, what I mean it is over your signature?

A. I never put that in there.

THE COURT: Be fair to the witness. I think the question should be if there is any misstatement, and if so

she can call attention to it.

A. I don't quite understand it.

Q. We will put it as the court suggests. Is there any misstatement in that letter?

A. I really don't know how to answer that.

Q. Well, that letter is dated on January 22, 1919; that is January 22 of this year. You knew the facts as well then as you know them now, didn't you?

A. Not altogether, no.

Q. Well, now, would it be any different. You started suit immediately after this letter was written, didn't you?

A. Yes.

Q. I don't mean immediately—

A. Yes, I understand you.

Q. I will get that date. This copy I have here does not give the date. On March it was filed; March, 1919, the suit was filed. I do not know when it was verified. So that within a short time after that you started this action. You had not seen Mr. Hill in the meantime, had you?

A. Since the suit was filed?

Q. Between the time that this letter of January 22 was written and the time the suit was filed?

A. January 22?

MR. ROBERTS: Has your honor the complaint before you there? Will you kindly look at the date of the verification, or let me do it?

THE COURT: On the 18th day of March, 1919.

Q. On the 18th day of March, and this was January 22. It was not less than 60 days after this letter was written that you started this action. Now, in the interim, between January 22 and March 18, you did not see Mr. Hill?

A. I think I did.

Q. You think you did?

A. I think then is when I saw him and went down to straighten the matter up with him. Yes, right away after that.

Q. Then you went after this letter was written to see him in order to settle with him?

A. Yes. Yes, sir.

Q. It was then that you say that you were willing to pay a thousand dollars?

A. Well, just as I said before; I did not want to bring anything into court, but I could not see where he was entitled to a thousand dollars, and I did not know what it was for, but in order to make everything nice and agreeable why I would do the best I could.

Q. Well, at that time you told him, did you not, that you thought he had paid only \$500 to satisfy the mortgage?

A. I never said anything to him at all about it.

Q. You never said that?

A. No, sir.

Q. That was what you thought, you thought he was charging you too much?

A. I could not see where he got that \$1000.

Q. You don't see now where he got the \$100?

A. No, I do not.

Q. Where he gets the \$1000?

A. No, sir.

Q. Then that was the trouble between you about the settlement, was it—you thought he was charging you too much?

A. Well, yes, because he should not charge me anything. I could not see it that way. I never asked the man to do that for me or anything, but at that I was willing to make things right for the man, but he never had it that way, and it shows you there on that deed, or I would have had some kind of paper to show, wouldn't I?

Q. When you wrote and asked him how much you owed him he came right back very frankly, did he not, in this letter of June 28, and told you that while he had advanced more than \$1000 if you would pay him on or about January 1, which was six months later, \$1000 would settle the whole thing?

A. Well, I have explained why I did that.

Q. Now, let's see, that letter of his was July 28, 1918; your letter asking him how much you owed him was prior to that.

A. I never knew it was there, that amount, that indebtedness, never knew it was there. It is new to me. The deed should be the same as the original, just exactly the same as the original deed, only H. B. Hill.

Q. Well, you mentioned that a while ago and I did not think it was worth while?

A. That was why I could not understand.

Q. I think we better clear it up now. When you say

the original I understand you to be talking about the deed you received from your mother.

A. That is the one I am talking about, that is the original deed, the one I told him to copy, to have a copy made, and that is the copy, but there was nothing in it like that, because I never knew anything about it, what that indebtedness would be.

Q. Just a moment ago you said you were trying to pay him a thousand dollars and you had \$500 all ready and wanted to give it to him and pay the balance later, and he would not take the money.

A. Well, gracious, that was just a few months ago when I went to see him. I do not remember just the date. Later on he wrote to me and asked me if I would pay it. I thought instead of bringing it into court I would pay him a thousand dollars. I had \$500 in cash. I went to him at Altoona and he had promised to have the deeds in the bank for me on Monday and there never was anything, never.

MR. LORD: I think that is the letter she referred to? (Counsel handed letter to Mr. Roberts).

Q. I hand you this letter marked defendant's exhibit "C" and ask you if this is the letter to which you referred several times, that he wrote you in January of 1919?

A. No, there is another one. This is the answer to



the letter that—

Q. That is Mr. Hill's letter?

A. Yes, sir, that is Mr. Hill's letter.

Letter offered and received in evidence marked Defendant's Exhibit "C."

(Exhibit "C" read to the witness).

Q. He starts this letter off by acknowledging the receipt of one from you inquiring how much you owed him?

A. All right. Mr. Lord has the first letter, and that is the answer to a letter I got from him when he wrote to me while he was here in Portland.

Q. If this was a gift why did you write and ask him how much you owed him?

A. Well, if I could get that letter and explain to you it would be perfectly plain.

MR. ROBERTS: I offer this letter in evidence.

MR. LORD: (To witness): Which letter do you refer to? Do you refer to a letter you wrote or a letter he wrote you?

WITNESS: Well, first where he wrote me that let-

ter and also a piece of poetry from the Broadway Hotel.

MR. LORD: I was going to clear that matter up on re-direct examination.

Q. Mr. Lord has been representing you in this matter how long?

A. Well, I don't just remember.

Q. Well, you saw him about this matter along about the time of these letters?

A. Yes.

Q. And you told him what the facts were?

A. After he did not keep his agreement with me, after I did not get anything, any deeds or anything, then is when I consulted Mr. Lord.

Q. Up until you consulted Mr. Lord you wanted to pay it?

A. I would to avoid the necessity of coming into court.

Q. Now, when you went to Mr. Lord you told him the facts, didn't you?

A. Well, I did not tell him only what I should have told him.

Q. Well, you went—

A. I have told the truth in everything I have told, but not near really what I should have told him.

Q. After you went and told Mr. Lord the facts, he wrote a letter representing you, did he not. (Counsel referred to a paper marked for identification Exhibit "D"). Will you admit, Mr. Lord, you wrote the letter?

MR. LORD: I will not make any admission. No, I will not admit I wrote it.

MR. ROBERTS: May I have permission to withdraw this witness for a moment? Mr. Lord, will you be sworn? I would like to have Mr. Lord sworn.

MR. LORD: I don't care to testify at this time—the witness is on the stand.

THE COURT: I think if Mr. Lord objects, you will have to finish with the witness.

MR. ROBERTS (to Mr. Lord): Well, I will hand you this letter that is marked Defendant's Exhibit "D" and ask you to just read that if you will.

Q. Now, Mrs. Struett, Mr. William P. Lord, whose name appears at the bottom of this letter is the same William P. Lord who is in court representing you as counsel?

A. Well, I don't know that.

Q. You don't know that?

A. I do not know it.

Q. Do you know any way we could prove it?

A. No, sir.

Q. Well, are the facts stated in that letter correct?

A. I did not write the letter. I do not know anything about it.

Q. The question is are the facts stated in that letter correct? You know whether they are or not?

A. I don't know anything about them because this is the first time I have seen the letter.

Q. They are all facts pertaining to this very case and a statement in relation to your claims and contentions, of what the facts are about this transaction. Are they correctly stated in that letter?

A. Well, I will leave that to Mr. Lord. I do not know.

Q. You decline to answer?

MR. LORD: It calls for the conclusion of the witness, whether it is correctly stated or not.

Q. Now, you had this letter in your possession all that time, from July 28, 1918, until you started this suit and yet you never at any time questioned the fact that you owed him this money, did you?

A. Why, no.

Q. Now, then, this paper that is marked Exhibit "A," which we call a defense or an agreement on his part to reconvey this property to you—you had that all the time in your possession?

A. Well, he sent me this, but he dated this back, though, mind you.

Q. I will get to that.

A. Yes, he dated this back to the year '16, when it was sent to me in '18.

Q. When I said we would come to that, I did not mean that. I was going to ask you about the date?

A. He dated that back to 1916.

Q. You had that any way since the time it came in your possession and produced it here in court, didn't you?

A. Yes, but not since 1916 I haven't had it.

Q. Let's see—

A. Get the envelope, there is where you will have the date.

Q. You stated to your own counsel here that you had the deed in your possession sometime after it was actually made, before it was delivered, did you not?

A. Why, I had the deed, yes.

Q. You had this deed before it was delivered to Mr. Hill?

A. Yes.

Q. Now, the deed—

A. I had it from 1915 to '17.

Q. Let's see about that, let's get at the facts. You have stated all the time that this deed was made in 1916, haven't you? And isn't it dated on the 10th day of August, 1916, right down here? Now, turn it over. That as you see is regularly acknowledged before a notary public who certifies that on the 10th day of August, 1916, you came before him and acknowledged the execution of the deed?

A. In 1916?

A. Yes.

A. That was even the following year. I had it before he asked me to let him take it.

Q. He paid the mortgage on the 20th day of October, 1915. Now, then, when did you buy that rooming house?

A. In June, 1916.

Q. In June, 1916?

A. Yes, sir.

Q. So that he had given you all of this money—

A. Before the deed.

Q. Yes. He had loaned you all of this money prior to the date of the deed, hadn't he?

A. He did not lend it to me at all.

Q. Well, you got it?

A. I did not ask him for it.

Q. You got it?

A. Yes, I got it, but I did not ask him for it.

Q. It is a fact you got it?

A. \$150, yes, sir, for that rooming house.

Q. So whatever amount Mr. Hill paid to satisfy that mortgage on your property and whatever amount

he had advanced to you for the rooming house, was prior to the date you executed this deed?

A. Yes.

Q. Now, then, while you executed this on the 10th day of August you think you did not deliver it until later. How much later, would you say?

A. When did he have that recorded? If I got it on the 10th day of August when was it recorded?

Q. Well, I have no objection to telling you when it was recorded.

A. Well, when?

Q. It was filed for record on the 6th day of June, 1917. You see that is on the back of it, that is all I know.

A. Why did he put it off so long?

Q. That I do not know. I only asked you when you gave it to him. You do not mean to state, do you, that you held it or did not deliver it until June, 1917?

A. Well, there are so many funny things about that deed, I could not tell anything about it.

Q. Well, this is the contract which he gave you, which says he held it as security, and that is dated De-



cember 22, 1916.

A. Well, it was not anything of the kind, then.

Q. Well, now, isn't that the time when he got the deed exactly?

A. Well, that does not make any difference. It was not when he mailed me this letter, and I think Mr. Lord can tell you something else. That is just before he went to California here last February.

Q. You said he went to California in February?

A. Yes.

Q. And this is dated December 22?

A. Well, that is all right. He dated it back, didn't he?

Q. Well, I do not know.

A. Well, I know.

Q. Now, counsel in his opening statement said that you had inherited this property, but as a matter of fact you received it by a deed, did you not?

A. Yes, sir.

Q. And you got that deed in nineteen hundred and when?

A. Nineteen hundred and ten.

Q. Now, since 1910, when you acquired the title of this property, you have never paid any taxes on it?

A. Yes.

Q. When did you pay taxes?

A. I can not tell you just when, but I think you can find receipts where I paid it.

Q. Well, I would like for you to find them.

A. I cannot tell you just the dates.

Q. If you contend you paid any taxes on this property since the time you acquired it, I would like to have you try to give us some date, some year. You say you paid them? Did you pay them once a year, or more?

A. I think that is the way they have been paid all the time, if I remember.

Q. Well, now—

A. I went to the court house with him in February when he paid the taxes, the last taxes.

Q. Well, he paid them with his own money, didn't he?

A. Why, yes, he paid them with his money.

Q. That is what you meant to say when you said that you had paid them, you meant you paid it with Mr. Hill's money?

A. Well, I would consider it my own for that matter.

Q. Put it this way, it was money that came from Mr. Hill?

A. Yes.

Q. So that all the money that has gone in the taxes for this property then, since 1910, was Mr. Hill's money at some time?

A. Oh, I do not think, not quite all, since 1910, but I would have to look back a little bit to find all of them.

Q. Put it this way, the taxes at the time he paid the mortgage were in default, you know that, don't you?

A. No, they were not. In default?

Q. Yes.

A. When I got this property?

Q. At the time the mortgage was foreclosed.

A. No.

Q. You do not think so?

A. No, sir.

Q. You do not know, do you?

A. Well, I think when the second mortgage was made the taxes were paid then.

Q. What is that?

A. They were kept up, the taxes were kept up then when Mr. Kramer took the mortgage.

Q. At the time Mr. Kramer took the mortgage?

A. Yes. It is since 1915, since he has paid the taxes, Mr. Hill.

Q. All right. Mr. Hill has paid them since 1915, that is all right. Well, then, the Kramer, Mr. Struett, was given in 1912?

A. Well, I mean, yes; I was thinking of my deed, my deed from my mother was in 1910.

Q. So that Mr. Hill has paid the taxes since 1912, hasn't he?

A. Yes, sir, that is right.

MR. ROBERTS: If the court please I was not counsel in this matter handling it originally. It was handled by counsel in Portland. In the answer they set

up only one year's taxes, and I would like to ask to amend to set up the payment of two additional years' taxes there. There is apparently no question about the fact that Mr. Hill paid them. We have receipts for them right here, as a matter of fact. I am not in a position myself to state just how the mistake occurred. They set up only the one year's taxes instead of three years, subsequent to the transaction.

MR. LORD: Oh, we have no objection to any amendment of that kind.

THE COURT: Make the amendment setting out the years.

MR. ROBERTS: I think in the answer it sets out only the year 19—

MR. LORD: Counsel can amend at any time. It is an insignificant amendment. I do not care anything about it, just \$25, or whatever it may be.

MR. ROBERTS: The year set out in the answer, if the court please, is only the year 1916 and it should be the year 1915 and the year 1917.

THE COURT: '15, '16 and '17?

MR. ROBERTS: Yes, '16 is already in and the amendment would be for the year, 1917, \$14.38, and 1915, \$16.80. It is not a very great amount.

RE-DIRECT EXAMINATION  
BY MR. LORD:

Q. Mrs. Struett, I hand you here defendant's exhibit "A." How did you receive that?

A. Through the mails from Portland.

Q. Where were you residing then?

A. Salmon street, 472 Salmon street.

Q. What apartment house?

A. Well, I had a rooming house there.

Q. What time did it come through the mail; what date did you receive that?

A. Well, I do not know. You have the envelope there that was with it.

Q. You have testified that was before he went to California?

A. Yes.

Q. Well, when did he go to California?

A. In February, 1918.

Q. Did anything else come along with that?

A. Yes.

Q. Letter or writing?

A. Yes.

Q. What was the occasion of him sending that to you through the mail, had you had any disagreement?

A. In a way.

Q. What was the condition existing between you at the time you received that through the mail? What year was that in, Mrs. Struett?

A. 1918.

Q. 1918?

A. '17. Let's see, 1918, yes, sir.

Q. Did he know about Struett then?

A. Yes.

Q. What was his feelings toward you and yours toward him when he sent you that?

A. Well, he was the same he always was and wanted me to give Struett up.

Q. He saw the handwriting on the wall, did he?

A. Yes, sir.

Q. He knew it was all over between you two, didn't he?

A. Well, no, I do not think he did.

Q. He asked me if I intended to marry that man, and I said no, I never had any intentions, which I did not.

Q. Which man is that?

A. Mr. Struett, my husband now.

Q. You say that something else came in that letter with that?

A. Yes.

Q. I hand you this letter here, dated February 8, 1918, and ask you if that is it?

A. This is it.

Q. This is the writing?

A. Yes, sir.

Q. That is the writing that accompanied the exhibit?

A. Yes, sir, right here.



Q. Was that the envelope that accompanied it or not?

A. Yes.

Q. You testified you were living on Salmon street and you have a different address on there?

A. Well, that did not belong there, because I lived on Salmon street. That does not belong there at all.

Q. What is the reason that was put on there?

A. I do not know, you will have to ask him, but there is the Broadway where he was staying.

MR. LORD: I offer this in evidence.

MR. ROBERTS: I object to that as incompetent, irrelevant and immaterial. The only thing I think would be material about that is, if it shows it, would be the time.

THE COURT: The objection on that general ground is overruled.

MR. ROBERTS: I object to this letter as not having been proven. There has been no proof of the execution and it is not signed by anyone.

THE COURT: She says this exhibit which you have offered was enclosed in the same envelope with

that, the way I understand it.

MR. ROBERTS: But there is no mention whatever to the exhibit, no reference to the exhibit.

THE COURT: That may bear on the truth of her answer.

MR. ROBERTS: I think it is perfectly manifest there is a mistake about that.

THE COURT: That is something you will have to show in some other way besides objecting to the offer of it.

MR. ROBERTS: I do not think this letter has been identified.

THE COURT: The only identification is that she says that exhibit "A" was enclosed with it in the envelope in which it came to her.

#### EXAMINATION BY MR. ROBERTS

Q. Is this all that was in the envelope that you have produced here?

A. That is all that was in it.

Q. That does not end anywhere.

A. That is the ending.

Q. There is no ending there, it does not even say yours truly.

A. That was enough.

Q. It stops abruptly.

A. That was all there was to it.

Q. At a very interesting place. You say that there was absolutely nothing in that but this half sheet of paper which you have offered here?

A. They both came in the same envelope.

THE COURT: She has reference to exhibit "A?"

A. Yes, they were both together.

Q. How do you identify this envelope as being the one you saw. It is not addressed to the place you lived at that time. Now, if you received other letters from Mr. Hill, how do you know that is the envelope. You admit you were not living there at that time?

A. Yes, that is all right if I was not.

Q. At the time you say that you got this, you say that you were not living at that place. You had lived at that place prior, hadn't you?

A. Here is February 8.

Q. I know, on this half sheet?

Q. Yes.

Q. But I say that you had lived at the address on this envelope at a time prior, hadn't you?

A. Yes.

Q. And at the time you say that this letter was received, you did not live there at all, did you?

A. Not at that time, no sir.

Q. Mr. Hill knew where you were living, didn't he?

A. Well, he knew before, he knew Trinity Place.

Q. He knew at that time?

A. He did, yes, but I guess he did not want to address it.

Q. Did not want to address it right?

A. Evidently not.

MR. ROBERTS: If the court please I urge the objection to that being received in evidence.

THE COURT: Objection overruled.

The paper was received in evidence and marked as

Plaintiff's Exhibit "2."

RE-DIRECT EXAMINATION

(Continued)

By MR. LORD:

Q. That writing accompanied exhibit "A" of the defendant?

A. Yes.

Q. Had you had any discussion about the property?

A. No, sir.

Q. Or about the indebtedness at this time?

A. No, sir.

Q. What was the object? Was this sent at your request or any demand of any kind?

A. At my demand?

Q. Yes.

A. No.

Q. Where was this deed executed?

A. In Vancouver.

Q. Exhibit No. 1, plaintiff's exhibit No. 1. In Vancouver, you say?

A. Yes.

Q. I wish you would recite to the court the circumstances of the execution of that deed.

A. Well, he asked me—

MR. ROBERTS: We have been all over that.

THE COURT: Go right to it with a leading question.

A. He just wanted me to have a copy made of the deed.

Q. State briefly in relation to the execution of this deed, where it was done and how it was done.

A. It was done in the rooming house in Salmon street when I lived there.

Q. That is in Victoria?

A. No, in Portland, Salmon street, Portland.

Q. Who drew the deed, who wrote it?

A. Mr. Tempes.

Q. Whereabouts?

A. In Vancouver. He told me to go over and have some Notary make it out, and so I did.

Q. Did he accompany you to Vancouver?

A. Not that time, no, not that day, but he was at the house at Salmon street that day until I started over.

Q. (By the court): I understand you simply took a blank deed and had your notary in Vancouver type-write it and fill it out?

A. With the exception of the thousand dollars in there. I never saw it before, because I never knew anything about it at the time. I did not know anything at all.

Q. Did you read the deed before you signed it?

MR. ROBERTS: I object to that as immaterial.

A. It was the same as the original, only he said to H. B. Hill instead of my name, you see? You have here—the original deed.

Q. (By the court): You took the deed from your mother and copied the description?

A. Yes.

Q. I do not think that is what she meant. I have the

deed here. I think this deed discloses the situation. I hand you the deed. Is that the deed from your mother?

A. Yes, sir.

BY THE COURT: Did you take that to a notary in Vancouver when you had this deed made up, the one you were just looking at?

A. Yes.

Q. You took this deed here?

A. And had a copy made from this.

MR. LORD:

Q. Was this deed to be in every respect the same?

A. Certainly, yes, sir, yes, sir. Just exactly like it.

MR. LORD: I offer this deed in evidence.

MR. ROBERTS: I object to that as incompetent, irrelevant and immaterial.

THE COURT: The objection is overruled.

Thereupon said deed was received in evidence and marked as plaintiff's exhibit 3.

Q. Was the consideration in the deeds to be the same or not?



MR. ROBERTS: I object to that as calling for a conclusion.

THE COURT: The objection is sustained.

Q. What consideration was to be expressed, if any, in the deed from you to Mr. Hill conveying this property?

MR. ROBERTS: I object to that as incompetent, irrelevant and immaterial.

THE COURT: Objection sustained.

MR. LORD: I will take that subject to the objection if the court please.

THE COURT: The objection is sustained. The witness does not require to be led. If you want to ask her what, if any thing, the defendant said, about the consideration, you can ask her that question.

Q. What, if anything, did Mr. Hill say in reference to the consideration which should be expressed in this deed?

A. His name instead of mine in my deed, put "H. B. Hill" instead of "Katherine Anderson."

RE-CROSS EXAMINATION  
BY MR. ROBERTS:

Q. I understood you to say that you went over to Clarke County, that is to Vancouver, with this deed, to the notary, Mr. Tempes, to have him make it out?

A. Yes.

Q. And Mr. Hill was not there?

A. He did not go to Vancouver with me. He stayed at the house.

Q. And you went over to the notary public, Mr. Tempes and told him you wanted him to make out this deed?

A. Yes.

Q. And after you told him that he made it out?

A. He asked me what I was doing with it, if I was giving it to somebody.

Q. He made it out?

A. Yes, he made it out.

Q. And no one present except you and Mr. Tempes?

A. That is all.

Q. That is all that was present, and then he made it out there in his office?

A. Yes.

Q. And you signed it and acknowledged it before him as Notary Public?

A. Yes.

Q. There in his office?

A. Yes.

Q. Such information as he had about the matter, so far as you know, he received from you?

A. Yes.

Q. He did not talk to Mr. Hill?

A. No.

Q. (By the court) : Mr. Hill told you what Notary to go to?

A. No, no. He did not tell me that.

(Witness Excused)

PLAINTIFF RESTED

HARRY B. HILL, the defendant, being duly sworn, testified as follows:

DIRECT EXAMINATION  
BY MR. ROBERTS:

Q. You are the defendant in this action?

A. Yes.

Q. When did you first meet the plaintiff?

A. In September, 1912.

Q. Where?

A. Rainier, Oregon, at her sister's and brother-in-law's home.

Q. Her name then was what?

A. Mrs. Katherine Smith.

Q. How long had you known her sister and brother-in-law?

A. Since 1905, somewhere 1905.

Q. Were you ever a boarder in their home?

A. I boarded there at times when I was not working, stopped there and made it my home practically. They were friends of mine.

Q. You are a mechanical engineer?

A. Yes.

Q. And you always worked at that?

A. Yes.

Q. And you are working at that now?

A. Yes.

Q. Your home is now where?

A. Altoona, Washington.

Q. You are running an engine at Altoona?

A. Refrigerating plant, Columbia & Northern Fishing and Packing Co.

Q. When you first met her in 1912, where were you living then?

A. I was living in Portland.

Q. Then you saw her how often down there at Rainier?

A. 1912 you have reference to?

Q. Yes.

A. I saw her, the first time I met her, in September and then during the holidays of 1912 and '13, at Rainier.

Q. Then she went to Aberdeen and she said she was there a year and you saw her twice there?

A. Yes.

Q. Now, you later went to work at Cascade Locks?

A. I went to work at Cascade Locks in June, 1915.

Q. Then you were in Idaho?

A. From June 13 to December 17, 1917.

Q. Were you back during that period?

A. No, sir.

Q. "When you came back from there, where did you go to work next?

A. From Idaho I went to California. I was in California during the holidays and from California I came to Portland in January, January, 1918.

Q. Now, Mr. Hill, did you make any proposition of marriage in any form to this lady?

A. I did not.

Q. Did you ever talk about marriage to her?

A. I did not.

Q. Subject ever mentioned or discussed between you?

A. No.

Q. She stated that on each occasion when you visited her you paid her from \$5.00 to \$10.00 Is that correct?

A. That is correct.

Q. On every occasion?

A. On every occasion, maybe more, maybe \$20.

Q. Now, are any of those items included in the claim which you bring here?

A. No.

Q. Now, Mr. Hill, will you explain to the court, or state to the court—it is conceded here you paid a mortgage on this property. State to the court how much you paid to satisfy that mortgage?

A. \$801.00. That is including \$83 interest previously paid; that is included in that \$801.00, \$83.20.

Q. Mrs. Struett said this morning you gave her that \$83.20 when you were going east, through Aberdeen; is that correct?

A. I wrote a check out for that interest. I loaned it to her.

Q. That is what I meant.

A. Yes, I loaned her that money.

Q. And that was the first money you had loaned her?

A. That was the first money I ever gave her or loaned her.

Q. Now, the mortgage was in process of foreclosure, wasn't it?

A. It was.

Q. And you had to make settlement with the bank for the plaintiff?

A. I made settlement with the attorney.

Q. Now, what items were included in that payment?

A. Well, there was the principal, interest, taxes, and fees, that is court and attorney fees.

Q. Now, this loan that you made to her to buy the rooming house, how much money did you loan her at that time?

A. \$200.

Q. Now, she said this morning she said it was \$150.



Tell the court about that.

A. I can explain that very easily. She came to me, that is where I was working at Cascade Locks, and wanted money to buy a rooming house with, and I told her I thought she was sending good money after bad, I did not want to lend her the money because I was satisfied she could not make it go. She told me the size of the rooming house and so on, and she wanted some place to live, and she said that she could make a living out of it. I said that she could not make a living out of it. She said that did not make any difference to me, she was willing to take the risk. Well, I told her, I says, before I can let you have any money, I will have to have some security for the money already loaned, and she said she would give me a deed for the amount, which she did later on. I loaned her the money. She said the rooming house would cost her \$300 and she was to make a half payment, so I gave her \$150 and then it seemed it was near the end of the month when the transaction was made and she discovered that she had to pay her month rent in advance and she asked for \$50 more and I gave it to her.

Q. That is the way the \$200 was loaned?

A. That is the way the \$200 came in.

Q. Now, I have had a statement prepared here of certain items; just examine that statement and see if

that is a correct statement of the amounts paid, together with the dates.

Q. She admits you paid the taxes, that is correct, is it?

A. I did.

Q. And you have paid them every year since 1912?

A. With the exception of 1918. I have not paid 1918 taxes owing to the case being in litigation.

(The tax receipts were offered and received in evidence and marked as defendant's exhibits "E.")

Q. Now, I will ask you to answer that question, if that is a correct statement of your claim here as to the moneys paid with the dates.

MR. LORD: I am going to object to any such statement being offered in evidence. It is merely a self-serving declaration.

THE COURT: It is a tabulation, isn't it?

MR. ROBERTS: It is a tabulation to show the claim; he can prove it, of course.

THE COURT: Give it item by item before you offer it.

MR. ROBERTS: I have proven each item, if the court please.

THE COURT: If there is nothing there he has not already testified to, I would overrule the objection.

MR. ROBERTS: There is nothing here but what he has testified to. It is merely for the convenience of the court. That is all it is for.

Statement received in evidence and marked as defendant's exhibit "F."

Q. Now, Mr. Hill, you have stated here that you paid \$801 on the 20th day of October, 1915?

MR. LORD: I object to counsel reading from the tabulated statement which is not admissible in evidence.

THE COURT: The object<sup>ion</sup> is overruled. This is giving it in concise form so that I can get at the total.

A. I paid \$801 minus \$83.20 on that date.

Q. The \$83 had been paid before?

A. Yes.

Q. Now, then, you have stated the date here on the 27th line as July 15, 1916?

A. Well, I could not exactly say the date, I am not

positive, but it was in July, 1916.

Q. Well, how near to the 15th?

A. 1916. It was just previous to this purchase on the boarding house. If they have any records of that, they would give the dates.

Q. These are the dates you paid the taxes?

A. Well, the tax receipts will show it.

MR. ROBERTS: I have had the interest computed, but, of course, the court can make its own computation.

Q. Now, Mr. Hill, you say that when it came up to your advancing additional money with which to buy the rooming house, this question of debt came up?

A. Yes, sir.

Q. Now, then, what was said. You have already stated you said you would have to have security and she told you she would give you a deed?

A. She told me she would give me a deed which she had.

Q. I will ask you whether or not that amount for which that deed was to be security, was agreed upon between you and her at that time.

A. She asked me when she was to have the deed made out, how much money she owed me together with the amount that she had borrowed for the rooming house and the amount paid upon the land, and I told her \$1000.

Q. Now, who had the deed made?

A. Mrs. Smith, as far as I know.

Q. Were you present at all?

A. I was not.

Q. What, if anything, did you have to do with it?

A. I haven't anything to do with it.

Q. What, if any, suggestion did you make to her as to whom she should get to make it?

A. I did not make any.

Q. The deed is dated on the 10th day of August, 1916. Was it delivered to you at that time?

A. It was not.

Q. When was it delivered to you?

A. It was delivered to me on the 21st day—

Q. Of August?

A. No, of December, 1916.

Q. This agreement which she has introduced here, plaintiff's exhibit "1," bears date of December 22. I will ask you to state if that was the correct date of that instrument?

A. Yes, sir, that is correct.

Q. Now, you say that the deed was delivered to you on the 21st day of December?

A. Yes, I see it shows the 22nd here, but I may be wrong in a day. I was under the impression it was the 21st.

Q. State whether or not the deed was delivered to you on the same date that the instrument bears?

A. The 22nd; I received the deed on the 22nd.

Q. Did you receive it that day, or was it the day before?

A. No, I received it the day before. I recorded the deed after I received the deed.

Q. So that you received the deed December 21?

A. 21.

Q. And this is dated December 22?

A. That is dated December 22.

Q. Now, this instrument was in duplicate, the plaintiff had one and you had one?

A. Yes. In fact the plaintiff has had two.

Q. In fact the plaintiff has had two?

A. Yes.

Q. Explain that; what do you mean?

A. Well, when I received the deed, I mailed her this statement; later she claimed to not have possession of it; she had either lost it or something and could not find it.

Q. You mean that agreement?

A. That agreement. So I says I will give you another one so that you will have something to show, and I sent her another one, an exact copy of the first. Whether she received it or lost it, I have no knowledge, but that was her own statement. I wanted her to have the agreement she had agreed upon.

BY THE COURT:

Q. What did you say her statement was?

A. My statement I agreed to.

Q. Her statement was what?

A. She said she did not have it, she did not know whether she had lost it or not. She evidently misplaced it or lost it, something to that effect.

Q. After she got the second copy, did she ever see you or write to you anything correcting the statement of what is in there?

A. No.

BY MR. ROBERTS:

Q. Now, I hand you this letter marked exhibit "D," together with the envelope, and I will ask you whether you received that letter in the envelope attached through the United States mail?

A. Yes, sir, I did.

Q. Now, this purports to be a letter from Mr. William P. Lord, attorney.

MR. LORD: I object to that.

MR. ROBERTS: I offer this letter in evidence, if the court please.

MR. LORD: I object to offering it in evidence. It has not been properly proved.

MR. ROBERTS: Do you deny you wrote it?



MR. LORD: I am not on the witness stand.

MR. ROBERTS: Mr. Lord, will you kindly take the witness stand?

WILLIAM P. LORD, being duly sworn, testified as follows:

DIRECT EXAMINATION  
BY MR. ROBERTS:

Q. I hand you exhibit "D" and ask you if that is your signature. Is that your signature?

A. That is my signature.

MR. ROBERTS: That is all.

MR. LORD: I want to make an explanation of that letter.

MR. ROBERTS: I do not think any explanation of that letter is necessary.

THE COURT: That would not be cross examination. In your rebuttal you can make any explanation.

MR. LORD: I am on the stand, called as a witness in this case.

THE COURT: You may consider it as rebuttal. You can make it now if you want to.

MR. ROBERTS: I object to that. I asked him if that was his signature and he says it is.

THE COURT: There is nothing to rebut unless the letter is offered.

MR. LORD: I admit this is my signature.

MR. ROBERTS: That is all.

MR. LORD: Are you going to offer it in evidence?

MR. ROBERTS: Yes, I expect to offer it before I am through with my case.

MR. LORD: Before I am off of the stand?

THE COURT: There will have to be a witness on the stand when an exhibit is offered, that is the general rule.

MR. ROBERTS: I will offer it now.

THE COURT: Admit it.

Said letter was received in evidence and marked as defendant's exhibit "D" and read to the court.

THE COURT: Now, you may make your explanation, but it will be considered as rebuttal and not cross examination.

MR. LORD: Now, your honor— —

MR. ROBERTS: I object to this as being improper in rebuttal and incompetent, irrelevant and immaterial.

THE COURT: I will hear you on the argument about what effect, if any, should be given to it, but I will overrule the objection at this time.

MR. LORD: In connection with that letter, at the time the matter was presented to me as attorney, it was not desired to go into the facts which have developed in this case; in fact, they were not submitted to me, I did not know anything about them. I took the original paper, which is defendant's exhibit "A," under date of December 22, 1916—that was handed to me with the other letter on blue paper here, and it was stated he refused to reconvey the property and what is said in that letter was only my conclusion from the very meager statement of the situation, and the party rather than to have any litigation was perfectly willing to pay what sum of money had been advanced on this mortgage, but it was never stated to me, as a matter of fact, that this money was a loan, that is the payment of this Kramer mortgage, or any money was a loan, and as far as any declarations are concerned in that letter, they were my own interpretation of the very meager facts that I had, that there were some six or seven hundred dollars due, as my letter shows there. I had not at that time seen

this deed which has been introduced in evidence which recites a consideration of \$1000. I had not examined the records of Clarke county and this paper recited a consideration, promises and agrees to surrender and transfer said deed when Katherine Smith pays the full consideration in said deed, and I did not know what the consideration was except as they had told me; Mrs. Struett had told me that he had paid this obligation. I knew nothing about these previous relations which had existed or which would actuate him in making such a present, and it was only eventually that I secured the information which has been introduced in evidence, after writing that letter.

### CROSS EXAMINATION

BY MR. ROBERTS:

Q. You say that you had before you, when you wrote this letter which has been introduced in evidence, and which is marked as defendant's exhibit "D," the agreement which is defendant's exhibit "A," and the blue paper which is exhibit "C"?

A. Yes, sir.

Q. That is correct?

A. Yes. I do not remember that maudlin poetry which the respondent has written.

Q. That is immaterial, you had this (indicating).

Now, then, you say that you wrote that letter under the impression and because he had refused to convey the property, whereas the letter which you admit you had before you, states exactly the contrary, doesn't it?

A. Oh, I do not know what the letter states.

Q. No, I do not think you do. That is all.

A. I dictated the letter.

Q. Wait a minute. She had been in consultation with you at that time since the 28th day of July previous. She first saw you in connection with this matter in July prior to the January when you wrote that letter?

A. I do not believe I ever saw Mrs. Struett until a day or so before I wrote that letter.

Q. She is mistaken about that, isn't she?

A. I think that she must be, because I am satisfied that she did not see me until that time that letter was written.

(Witnesse Excused)

HARRY B. HILL, being recalled, continued his testimony as follows:

DIRECT EXAMINATION (Continued)  
BY MR. ROBERTS:

Q. Now, did you ever at any time refuse or object to the re-conveyance of this property?

A. No, sir.

Q. Now, after you received this letter from Mr. Lord, Mrs. Struett came over to Altoona, to see you about this matter, did she not?

A. She did.

Q. And what did she say she came over for?

A. She came over to see if she could not settle the matter.

Q. Did she say anything at that time about not owing you money?

A. No.

Q. She says she offered to pay you at that time. State the fact about that?

A. She told me—she asked me first, how I would want to settle. Well, I says, just as I wrote you. Well, she says, I have not the thousand dollars, but she says, I have five hundred dollars I could give you tomorrow. I says, very well. She says I will have the balance in a short time, possibly a couple of weeks or such a matter. Well, I told her, I says, that is satisfactory as far as I

am concerned. I says, the matter is now in the hands of my attorney, Mr. Harrison Allen, in Portland, and I says you can either pay the money to Mr. Harrison Allen, or you can deposit it in the bank, and when you have the full amount, the deed will be turned over to you.

Q. After you received this letter from Mr. Lord, did you consult an attorney?

A. I went immediately; that is, I received that letter on Friday and I went to Portland on Sunday and saw Mr. Harrison Allen and I left the paper and everything in his care, and he has had them ever since until I delivered them to you two or three days ago, Monday morning.

Q. You say that you told her at that time that any settlement she made with Mr. Allen would be all right?

A. I did.

Q. Now, you have been ready at all times on receipt of the money to re-convey this property?

A. How is that?

Q. State whether or not you have been ready at all times to comply strictly with your agreement to reconvey this property?

A. Any time.

A. Any time.

Q. On receipt of the money?

A. Any time, any time.

**CROSS EXAMINATION  
BY MR. LORD:**

Q. How much money do you claim is due from Mrs. Struett?

MR. ROBERTS: I object to that as incompetent, irrelevant and immaterial, and not proper cross-examination.

THE COURT: Objection overruled.

A. Well, the amount set forth in the answer.

MR. ROBERTS: We amended that this morning and added a couple of tax payments.

WITNESS: We have added, of course, that to the answer.

Q. You are asking her to pay you back, 1,288.49?

A. I cannot swear that computation is correct, but the amount of the principal is correct there, that was computed in Mr. Robert's office. Now, as to the correctness of that I can not swear. That would be left to



the court, I should judge.

Q. (By the court): You mean the principal of the items you swear to?

A. I swear to. The computation I won't because I did not go over that.

Q. You did not charge anything for any other moneys which you may have given her?

A. I have no charge whatever for any other moneys that I may have given her, none whatever.

Q. How much did you give her?

MR. ROBERTS: I object to that as immaterial if he means outside of these items.

Q. Yes, I mean outside of these items.

THE COURT: Well, he did speak about items of five and ten and perhaps twenty dollars. it is cross examination. Objection overruled.

A. Well, I could not state exactly how much money, but I have an idea it would be more than double that amount.

Q. An idea it would be more than double \$1288. In other words, probably \$2500, in four years' time?

A. Well, no, hardly that. No, that would not be

right. Of course, I would not make an accurate statement. As I told you any time I met her, that is, saw her, of course, I gave her anywheres, five, ten or twenty dollars, nothing less than five at any time.

Q. What purpose was that given for?

MR. ROBERTS: I object. I do not believe that is going to help the court and there could not be anything gained by it.

THE COURT: The objection is sustained. The defendant has not undertaken to contradict the plaintiff at all regarding this relationship. There has not been any testimony in any way contradicting that so there is nothing to cross examine him about on that.

MR. ROBERTS: That is my idea.

THE COURT: It stands unless there is some other evidence beyond her statement that is in contradiction to it, and the court will take it.

Q. Well, Mr. Hill, you stated you never talked marriage with this plaintiff?

A. I did state that.

Q. You never intended to marry her at any time during your relations with her?

A. *I did not*

Q. Were you a single man or a divorced man at that time?

**MR. ROBERTS:** I do not believe there is anything to cross examine about on that.

**THE COURT:** In this character of cases, the bars are thrown down on cross examination. There really are no barriers and this witness having stated he never talked marriage to her, it has opened up a wide field, so that I will overrule the objection.

(Question read).

**A.** What time?

**Q.** During the years 1912 to '18?

**A.** 1912.

**Q.** To '18?

**A.** From 1913 to 1918 I was single.

**Q.** You were in a position then that you could have married the plaintiff if you saw fit to do so?

**A.** I could do so, nothing to hinder me from it.

**Q.** And you want the court to understand that you never intended to marry her?

**A.** I never intended to marry her; that was never thought of; there was no occasion for anything of the kind.

Q. Your relations with her were perfectly satisfactory?

MR. ROBERTS: I object to that.

THE COURT: Objection sustained.

Q. The first money that is of any considerable sum, you gave her was the \$200 for the rooming house?

A. No.

THE COURT: There may be a misunderstanding there. You mean gave into her hands when you said gave her?

Q. Well, how much money did you say was put into this rooming house?

A. In the rooming house?

Q. Yes.

A. \$200.

Q. Did you write a check for that sum of money?

A. I did not. I wrote a check for \$150, and gave her \$50 in cash.

Q. You want the court to understand that she agreed to repay that money to you?

A. She did.

Q. And it was a loan?

A. It was a loan.

Q. You wrote her a good many letters, did you not?

MR. ROBERTS: I object to that as not proper cross examination and as incompetent, irrelevant and immaterial.

THE COURT: Objection overruled.

Q. You wrote her letters?

A. Yes, I wrote her letters as well as she wrote me.

Q. In those letters you made a great many statements of your affection for her.

MR. ROBERTS: I object to that as incompetent, irrelevant and immaterial.

THE COURT: The objection is overruled.

MR. ROBERTS: Not the best evidence.

THE COURT: Objection sustained.

Q. The only charges you made, you say, are the charges for the rooming house, that is \$200, and the money paid on the Kramer mortgage and attorney's fees and so forth?

A. And the interest. That was loaned her in 1914.

Q. How about the trip to California; did you charge her in that rooming house deal, with any of that money?

MR. ROBERTS: I object to that as not cross examination and as incompetent, irrelevant and immaterial, he has stated over and over here he charged her with absolutely nothing except these two items, I might say three, mortgage, taxes and interest.

THE COURT: This is about the rooming house.

MR. LORD: I asked him, did he charge any of that money of his trip to California into the rooming house obligation. I want to see what moneys he has tried to get back.

THE COURT: That is what I understood you, whether part of the expense to California was charged against the rooming house, objection overruled.

MR. ROBERTS: That is assuming he made a trip to California.

Q. You made a trip to California, did you not?

MR. ROBERTS: I object to that as incompetent, irrelevant and immaterial, not proper cross examination.

THE COURT: Objection overruled.

A. Yes, sir.

Q. When you went to California, what year was it in?

A. I have been to California a number of different times.

Q. What year, did you go in 1916?

MR. ROBERTS: I object to that as incompetent, irrelevant and immaterial.

THE COURT: Sustained.

Q. I will ask you, did you pay Mrs. Struett's railroad fare to the State of California?

A. I never did.

Q. You never did?

A. I never did.

MR. ROBERTS: I object to that. It was answered before I had a chance to object to it. I want to object to it.

THE COURT: There is nothing for the court to rule on.

MR. ROBERTS: I move to strike it out. (Discussion).

THE COURT: In view of what the court knows

about criminal law and counsel for the plaintiff having said that the witness might have a chance to answer it somewhere else, I will sustain the objection.

MR. LORD: Exception.

MR. ROBERTS: I ask that it be stricken out?

A. It will be stricken out.

MR. LORD: Exception.

Q. You say that this money for the rooming house was loaned about July, 1916?

A. About that time, yes.

MR. LORD: I want to offer this letter in evidence.

MR. ROBERTS: What is the purpose of offering this?

MR. LORD: The purpose is to show and to impeach his statement about the marriage.

MR. ROBERTS: There is not a word in it about the marriage. I have read it all.

MR. LORD: The relationship, for one thing, and another thing is, this is not a gift, according to their contention. It shows the relationship between the parties. The statement I particularly desire to call the



court's attention to is the one that she need not want or freeze this winter, tending to disclose whether any moneys that had been advanced were a loan or a gift.

THE COURT: Objection sustained.

Q. I hand you this letter; is that your handwriting?

A. Yes, that is my handwriting.

Q. You wrote that to Mrs. Katherine Smith, who is the complainant in the case?

A. Undoubtedly did from the address on the envelope.

MR. LORD: I will offer that letter in evidence.

MR. ROBERTS: I object to that as incompetent, irrelevant and immaterial; not cross examination.

THE COURT: Objection sustained.

MR. LORD: Exception. I will offer it subject to the objection. Being an equity suit, I want to complete the record.

Thereupon the letter referred to was marked as plaintiff's exhibit No. 4.

Q. I will hand you a letter dated June 12, 1916.

MR. ROBERTS: To save time, I will admit he wrote it.

Q. Signed Harry?

MR. ROBERTS: I admit he wrote it.

MR. LORD: I will offer it in evidence.

MR. ROBERTS: Objected to as incompetent, irrelevant and immaterial, not proper cross-examination. This is along the same lines.

THE COURT: Objection overruled, the letter will be admitted.

The letter was received in evidence and marked as plaintiff's exhibit "5."

MR. ROBERTS: (After examining another letter). This letter is dated September 2, 1916. I admit he wrote it.

MR. LORD: I offer this in evidence.

MR. ROBERTS: I object to that as not cross examination, incompetent, irrelevant and immaterial. Not a word in it about marriage. Not a word in it about this money. Not a word in it about the subject matter of this controversy.

THE COURT: Objection overruled. It will be admitted.

MR. ROBERTS: I want to say here if these are being admitted on the ground of any bearing they may have upon the marriage promises, the marriage is not an issue in the case. There is no charge here about that. That is why I have objected all the time on the ground that it is incompetent and immaterial. It is not an issue in the case.

Thereupon said letter was received in evidence and marked as plaintiff's exhibit No. "6."

Q. You made out a writing which you delivered to Mrs. Smith, who is now Mrs. Struett, purporting to bequeath to her all of your property, did you not?

MR. ROBERTS: I object to that as not an issue in this case.

Q. Along about the time that this property was conveyed to you?

MR. ROBERTS: I object to that as not proper cross examination.

THE COURT: Objection is sustained.

MR. LORD: Exception.

Q. Did you take out a life insurance policy in her favor?

MR. ROBERTS: I object to that as incompetent, irrelevant and immaterial.

THE COURT: In whose favor?

MR. LORD: Mrs. Struett's favor.

MR. ROBERTS: I object to that as incompetent, irrelevant and immaterial.

THE COURT: The objection will be overruled.

A. I did not.

Q. That Mrs. Struett is beneficiary?

A. I did not. I never took out any insurance policy.

Q. Did you write her in August, 1912, to the effect that you had taken out the insurance policy?

A. I do not think I did. If I did it was a mis-statement. Nothing in the record that will show that I took out an insurance policy.

Q. Is that your handwriting (handing witness a paper)?

A. That is my handwriting, yes.

MR. ROBERTS: This is dated August 12th. You asked him if he wrote her a letter in 1912.

MR. LORD: I asked him if he wrote her that particular letter I am offering in evidence.

MR. ROBERTS: What is the date?

MR. LORD: That is August 12, 1916.

MR. ROBERTS: I object to that letter on the ground it is incompetent, irrelevant and immaterial.

THE COURT: It will be admitted.

Thereupon said letter was received in evidence and marked plaintiff's exhibit 7.

Q. In July 26, 1916, you were purchasing some sort of patent, weren't you?

A. I haven't purchased any patent.

MR. ROBERTS: I cannot think that is material.

THE COURT: I will sustain the objection.

MR. LORD: Of course, the materiality cannot be shown in one question exactly.

THE COURT: Put it all in one question.

Q. Well, in July, 1916, you were buying a patent, which you gave Mrs. Struett one-half interest in; is that not a fact?

MR. ROBERTS: Objected to, as incompetent, irrelevant and immaterial.

THE COURT: Objection overruled.

MR. ROBERTS: Not cross examination, if the court please.

A. I have never bought any patent.

Q. Did you ever send her \$150 to pay for a patent?

A. Yes. I have the returned check in my pocket.

Q. And was that a gift to her?

A. Gift to her?

Q. Yes.

A. It was not. I can explain that.

Q. There is no part of that that was a gift to her?

A. No part of that. The transaction was with another party and the party was to call there for the money and I forwarded the check to her to deliver to him.

Q. But you did not give her any interest in it?

A. I did not give her any interest in it.

Q. I hand you a letter dated July 26, 1916, and ask you to identify that letter, whether or not it is your signature?

A. This letter states that I promised to give her one-half of anything I should derive from this. That is very true. I will admit that.

Q. It is a fact, then, that you did agree to give her one-half of the profits out of that adventure?

A. Should I secure it.

Q. That was along about the time this rooming house was purchased, too, wasn't it?

A. In fact the party concerned, he and his friend—well I don't know whether he was or not, but a friend of his was rooming with Mrs. Smith at the time and Mrs. Smith introduced them to me. She said that he had something there which they thought was very good and she would like me to look at it. I says all right, I will look at the device, and agreed to, but in the meantime Mr. Jones had sold this to another party.

Q. What do you mean by that, didn't have anything to sell you at all?

A. I bargained with him for a half interest in a devise, not a patent. He has not got a patent.

Q. What?

A. He hadn't any patent. He had a device and I agreed to take a half interest with him and he was to pay back the amount paid as soon as they got on the

market. He wanted something to help start this matter along, but the check did not reach him in time and he sold a half interest in it to another party that took up the matter and manufactured the article.

MR. ROBERTS:

Q. You never got anything I understand; I understand you never got anything out of it?

A. Not according to that, not from that deal.

Q. That is what I mean.

A. Not from that deal, I never received anything from that deal.

MR. LORD:

Q. Is it a fact you never demanded back from Mrs. Struett any sum of money whatever that you had given her?

A. That is not a fact.

Q. When did you make a request then?

A. When did I make a request for it?

Q. Yes.

A. I loaned her this money, owing to the fact I was a friend of the family and had been for a number of



years. She was stopping there; hadn't any money to pay this off—understand? And she agreed to pay it back as soon as she possibly could. She represented to me and always had represented—

**THE COURT:** The question was, when you made demand—when did you ask her for the money back?

**A.** Oh, I have never asked her for money back. I just simply gave her a little note there stating that I would deliver the deed upon the payment of \$1000 whenever she asked me or whenever she gave me the money.

**Q.** But that was delivered long after the rooming house was purchased and long after it had been abandoned, isn't that right?

**A.** No, not after it had been abandoned.

**Q.** How long was it in fact? That writing was not in fact sent to Mrs. Struett until after 1918?

**A.** Oh, yes, it was. I answered that question once before. I gave her that when she presented me with the deed, and she claimed to have lost it, misplaced it or something of the kind, she didn't have it in her possession, and I gave her another one.

**Q.** Gave her two, then?

**A.** I did; I gave her two.

Q. You never took any promissory note from Mrs. Struett?

A. Never took any promissory note from Mrs. Struett.

Q. And didn't you expect that woman whom you did not intend to marry would have trouble about this transaction?

A. I did not. I had loaned her brother-in-law and sister some money; that is possibly twice that much without any security. I supposed she was just as honest as they were. They paid it back without anything.

MR. LORD: I want to offer this letter in evidence. I will offer only this part of this letter.

MR. ROBERTS: I object to that. (Discussion).

MR. LORD: I will offer the entire letter in evidence.

MR. ROBERTS: I object to that letter as incompetent, irrelevant and immaterial, and not cross examination.

THE COURT: I will sustain the objection.

MR. LORD: Exception. I will offer it subject to the objection.

**THE COURT:** Make your record on it, show it was offered and the objection was sustained, and it was identified.

Letter dated July 26, 1916, was marked for identification as Plaintiff's Exhibit 8.

**Q.** As I understand, you registered Mrs. Struett as your wife in a hotel in 1916?

**MR. ROBERTS:** I object to that as incompetent, irrelevant and immaterial.

**THE COURT:** She said he did and he has not denied it. So that I sustain the objection.

**Q.** What do you intend to become of this woman after all of these years of your relationship with her?

**MR. ROBERTS:** Objected to.

**THE COURT:** Sustained. This is not a damage suit.

## RE-DIRECT EXAMINATION

**BY MR. ROBERTS:**

**Q.** Just a matter I overlooked. Mrs. Struett stated after she sold the rooming house she offered to repay you that \$200 and you would not take it. Is that true?

A. I never heard anything of it.

Q. Now, then, in July apparently she wrote you a letter asking how much she owed you and you wrote back and told her, didn't you?

A. I did.

Q. And then after January, after you got the letter from Mr. Lord, she came over to see you again and tried to settle with you?

A. She did.

THE COURT:

Q. You said you let her have \$83?

A. The \$83, your honor, was loaned to her to pay taxes on the mortgage from 1912 to 1914, the interest on the mortgage.

Q. That is something you gave her before you finally took up the mortgage?

A. Yes, that was the first payment.

Q. And that \$83 is in the \$800?

A. \$801, yes, sir.

Q. That is correct?

A. Yes, sir.

MR. ROBERTS: You remember Mrs. Struett testified about that, there is no dispute between them and he states he gave her that to pay the interest?

WITNESS: \$83.20.

(Witness Excused)

DEFENDANT RESTED  
REBUTTAL

MRS. STRUETT, the plaintiff, being recalled, testified as follows:

DIRECT EXAMINATION

BY MR. LORD:

Q. Did you ever borrow \$83 from Mr. Hill?

MR. ROBERTS: I object to that as not rebuttal; she said she got the \$83 from him at Aberdeen and got it to pay interest on the mortgage.

THE COURT: Don't open this all up again. I will overrule the objection to this.

MR. LORD: That is the only question I want to ask her.

**WITNESS:** No, sir, I never asked him for a nickle. He gave it to me, told me not to worry. I was a widow at that time and I didn't have any money or anything else. That was on his trip East; and he wrote me a check.

**MR. ROBERTS:** You used that \$83 to pay interest on this Kramer mortgage, did you not?

A. Yes, sir.

(Witness Excused)

**PLAINTIFF RESTED  
CASE CLOSED**

**MR. ROBERTS:** (During argument): I would like to ask one question; I don't know whether it is material or not. Mrs. Struett, what is the value of that land?

**MR. LORD:** I object. Its value is admitted in the pleadings.

**THE COURT:** It is admitted to be in excess of the jurisdictional amount, the value set out.

**MR. LORD:** I will admit that the respondent has made himself safe.

**MR. ROBERTS:** At the same time it is very questionable whether this court has any jurisdiction in this matter.

**THE COURT:** If that is your purpose, to attack the jurisdiction of the court on the value of this land at this time, I will sustain the objection.

**MR. ROBERTS:** Of course, as I stated to your honor, I did not have anything to do with making up the issues in the case.

**THE COURT:** If you want to show, without attacking the jurisdiction, that there is nothing unconscionable about the transaction—

**MR. ROBERTS:** There could not be that, because we are offering to convey.

**THE COURT:** Then I sustain the objection.

**MR. ROBERTS:** We offered all the time to convey and offer in court to convey. That is all.

**THE COURT** (after argument): It is not the province of the court to determine in this case whether or not the defendant's conduct was sportsmanlike or not. This is a court of equity and if the transaction is tainted with immorality, why both parties would have to go out of court without any affirmative relief, that is the defendant would not be allowed to foreclose and the plaintiff would not be allowed to secure a decree commanding the defendant to transfer, or a commission if he refused to transfer, the property. The trouble about untangling the part of these transactions which were legal

and the part which may have been tainted with immorality and illicit relations between the parties, presents the difficulty in this case, and where there is a dispute between two individuals, the court's safest guide is the writings passed between the parties, viewed in the light of the circumstances and conduct of the parties.

This man it seems had enjoyed the most intimate relations with the plaintiff for a year or two before he took up this mortgage, and all it was costing him so far as the evidence disclosed was certain amounts of money that he paid on his visits to her. Therefore, I conclude that when he advanced this amount of \$801, there was not any necessity staring him in the face so that it would be necessary to part with any such large amount of money in order to continue to enjoy all these illicit relations, and there was not any threatened separation, or he was not threatened with a loss of her if he did not do this. Therefore, I conclude that his putting up this money to take care of that mortgage was not tainted with anything illicit. It may have been that if the illicit relations had not existed between them and she had been a stranger to him, he would not have done it, but what a man's motives may be is not necessarily a part of the consideration of a contract. He may help a friend where he would not help a stranger. He may help a mistress where he would not help his mother-in-law, but that does not taint the transaction necessarily. A man may have a lawful transaction with a person with whom he is having unlawful transactions, but I think that these writ-



ings will have to be construed, where uncertain, against the defendant, and that anything he did not include in the writing will be looked upon as a gift. He promises to turn over this property on the payment of the amount of money, a thousand dollars, but he does not say anything about interest. It may be in ordinary writing between parties we would not construe it as close as this, and the court could conclude that interest was recoverable at the legal rate, but he was making gifts to this woman and right in the face of it he had advanced more than a thousand dollars on this property when he wrote her that he would surrender it to her on the payment of a thousand dollars. So there was a gift of all over and above the thousand, and the court concludes that he intended to give her anything that he may have advanced over a thousand dollars and any interest within a reasonable time, and I hold that the time is not unreasonable. I will also take the plaintiff's version of the rooming house transaction and hold him down to \$150 on that. He says he gave her a check for \$150 and cash for \$50. Being a disputed point, there is nothing brought to corroborate either of them, the burden is on the defendant to show the fifty. I see it would amount to a thousand dollars on that debt without that wouldn't it?

**MR. ROBERTS:** It would amount to more than a thousand, yes, without that extra \$50. May I suggest I think we would be entitled to the subsequent tax payments?

**THE COURT:** That is \$14 in 1918. He is entitled to the payment of this and the subsequent one in 1917.

I find that there was no misunderstanding of marriage. These relations were entered into when neither party could marry the other or anybody else, and the court's observation is that having obtained their ends and a substantial part of the advantages of the married relation without any of the responsibilities, human experience teaches that people who have arrived at mature years as both these parties had do not rush off and get married just as soon as the bars are removed, as long as they can get along and enjoy a large part of their liberty and sustain their intimate relations at intervals sufficiently frequent to gratify those who have arrived at that time of life.

Also this case might present a different aspect if the plaintiff was young and inexperienced at the time this arose, and if this man had exercised some commanding influence over her, but there is nothing to show he did. The fact that he did not make this demand on her until he did, is also a circumstance. Experience also teaches there is a time that comes when under different circumstances or from interest in somebody else, the hot friend cools. That time may have arrived. That is one of the disadvantages of such illicit relations—nothing to be surprised at. You both understand what I hold?

**MR. ROBERTS:** As I understand, you find the defendant is entitled to \$1000, without interest on the \$1000 except from this date, and that you allow us in

addition to that two years' taxes, 1917 and 1918, the last two items of taxes, one for \$14.82 and one for \$14.38, making \$29.90, with interest from now. Then the finding is \$1029.20. Of course, it follows as a matter of course we are entitled to the foreclosure.

**THE COURT:** It is found to be a mortgage, and you are entitled to foreclose.

## PLAINTIFF'S EXHIBIT 1

(Copy)

### WARRANTY DEED

The Grantor Katherine Smith, a widow, formerly Katherine Anderson, for and in consideration of one thousand and no/100 dollars in hand paid, conveys and warrants to H. B. Hill, of Cascade Locks, Oregon, the following described real estate situate in the County of Clarke, State of Washington, to-wit: Beginning 37.42 chains East and 15.68 chains South of the Northwest corner of Section 10, Township 2 North Range 1, East W. M., running thence South 4.32 chains to Southeast corner of the Hannah Tyszkiewicz tract, thence East 17.81 chains more or less to the center of the county road; thence North 7 degrees 45 minutes West along said road 4.36 chains, thence West 17.28 chains more or less to the place of beginning, containing 7:58 acres more or less.

Dated this 10th day of August, A. D., 1916.

KATHERINE SMITH (Seal)

Executed in presence of:

**F. W. TEMPES**

State of Washington }  
County of Clarke } ss.

I, F. W. Tempes, do hereby certify that on this 10th day of August, A. D., 1916, before me personally appeared Katherine Smith, to me known to be the individual described in and who executed the within instrument, and acknowledged to me that she signed and sealed the same as her free and voluntary act and deed, for the uses and purposes therein mentioned.

Given under my hand and Official Seal, this 10th day of August, A. D. 1916.

(Notarial Seal)

**F. W. TEMPES,**

Notary Public in and for the State of Washington, residing at Vancouver in said County.

(Endorsement) No. A12482 Warranty Deed from Kathrine Smith to H. B. Hill. Dated ....., 191.....  
The within instrument was filed for record on the sixth day of June, 1917, at 11:15 o'clock A. M., and recorded in Book 120 of Deeds on page 587 Records of Clarke County, State of Washington at request of H. B. Hill.

.....  
Auditor and Recorder.

By.....

Recorder's Fees, \$ .75

Deputy.

Mailed to.....

## PLAINTIFF'S EXHIBIT 2

(Copy of Letter)

Broadway Hotel, Portland, Ore., Feb. 8, 1918.

Dear Sweetheart:

With my eyes filled with tears, and the thoughts of past years that I have happily spent with you, I'm so lonely and sad that I'm near driven mad, and know not what to do.

So goodbye, good luck, and may your future life be filled to overflowing with joy and happiness, is the earnest wish of one who has loved you dearly for yourself alone.

(Copy of Envelope)

BROADWAY HOTEL

(Post Mark)

Broadway and Burnside Street

Portland, Oregon

Portland, Oregon

Feb. 8 7-PM 1918

Mrs. Kathryn Smith,

39 Trinity Place,

Care Berkley Apts.

City.

## PLAINTIFF'S EXHIBIT NO. 3

(Copy)

## WARRANTY DEED

The Grantor, Sarah J. Anderson, widow of Clarke County, Washington, for and in consideration of love and affection in hand paid, convey and warrant to Katherine Anderson, a single woman of same County and

State, the following described real estate situated in the County of Clarke, State of Washington, to-wit:

Beginning 37.42 chains East and 15.68 chains South of the Northwest corner of Section 10, Tp. 2 North Range 1 East W. M., running thence South 4.32 chains to the Southeast corner of the Hannah J. Tyszkiewicz tract, thence East 17.81 chains more or less to the center of the County road; thence North 7 degrees 45 minutes West along said road 4.38 chains, thence West 17.28 chains more or less to the place of beginning, containing 7.58 acres more or less.

Reserving, however, unto the said Sarah J. Anderson and her assigns the free and unobstructed use during the period of her natural life, of all improved land on said described tract and of all improvements thereon.

Dated this 13th day of October, A. D. 1906.

MRS. SARAH J. ANDERSON (Seal)

Executed in Presence of

J. H. ELWELL,

T. H. ADAMS

State of Washington }  
County of Clarke } ss.

I, J. H. Elwell, the undersigned, authority, do hereby certify that on this 13th day of October, A. D. 1906, before me personally appeared Sarah J. Anderson, a widow, to me known to be the individual described in,

and who executed the within instrument, and acknowledged that she signed and sealed the same as her free and voluntary act and deed for the uses and purposes therein mentioned.

Given under my hand and official seal this 13th day of October, A. D. 1906.

J. H. ELWELL,

Notary Public for Washington, residing at Vancouver, Wash.

38935 Warranty Deed from Sarah J. Anderson to Katherine Anderson. Dated Oct. 13, 1906. I hereby certify that the within Warranty Deed was filed for record in the Auditor's Office of Clarke County, Wn., by Sarah J. Anderson on the 23rd day of March, 1910, at 11:20 o'clock A. M., and that it is recorded in Deed Records of said County, on Page 374 of Book 81. M. B. Kies, County Auditor of Clarke County, Wash. By.....Deputy. Recorder's Fees 60c.

#### PLAINTIFF'S EXHIBIT 4

(Copy of Letter)

Monday Morning's Mail

Sat. 8:15 P. M., Sept. 30/16.

Dear Little Sweetheart:

Your ever welcome received last P. M., so sorry you feel so miserably; you say sick at your stomach; could



there possibly be anything wrong you know what I mean I should hope not. just see what you missed sweetheart by me being there last Sunday. just think what a fine time you would had joy riding on the Highway with the bunch and little Simon. Yes Sweetheart I expect you would like to see all the Folks I know you feel lonesome, but try and make the best of it Yes, I wish I could be there to have supper with you. don't worry about where you will be this winter. I will see that you don't freeze. this time last Sat night I was buying some Clam Wet. you bet I wish I was there tonight with you instead of up here all alone. Some Clam Wet would sure be fine now, and I could love you a whole lot too. Sweetheart I know how you feel about giving up your kitchen it is nice and handy and a good living room too. Now Dearie don't sell the house if you don't want to. the only reason I suggested you sell was because you were not getting anything for what you were doing. I am willing to help you along with it if you just want to keep it for a Home. Well Sweetheart I have lots of work for tomorrow as they expect to start the mill going Monday. I don't think it will run more than a month or so this time. Yes Dear winter will soon be here. I hope it won't be so cold and snowy as last winter. It looks tonight as if it might rain the weather has been fine most all week. Sweetheart I am getting seepy and I wish I was going to bed where I did last Sat night. do you wish so too? or would you rather seepy by your lonie. I try to be as careful as I possibly can sweetheart. Well good night with all my Love and a bushel of Kisses and every other little sing. Lovingly yours,

HARRY.



(Envelope)

(Postmark)

Cascade Locks 2.....Oregon  
 Mrs. Kathryn Smith,  
 408 Main Street,  
 Portland, Oregon.

## PLAINTIFF'S EXHIBIT NO. 5

(Copy of Letter)

Monday, 7 P. M., June 12/16.

Dear Sweetheart:

Your very dear letter of the 11th rec'd this P. M. very glad as usual to hear from you, but so sorry you are so lonesome and blue, cheer up you are not left alone, nor will you want for the necessities of life as long as I am able to secure them for you. I am glad you do love Aubrey and Bob. I think they appreciate and love you in return. Sweetheart you ought to go to bed earlier than you do every night. You may not feel the effects now but will in the years to come. I am sorry your cold isn't any better, you must take better care of yourself. Sweetheart you don't have to be dependent on your relatives in fact you are not for you always do more than enough to pay your way. I think sweetheart I fully understand the assertion you made in your letter and I surely appreciate your feeling toward me, and hope you will never have any reason to regret that ever felt toward me as you say you do. You have the right idea when you say I want a good pal, and I fully believe I have found one in you, and have absolute confidence in

your doing just what you say you will. I have no desires to find some one I could care more for. I only wish I was situated so we could be together, hope to be some of these days. I want to get a little money ahead so that we can go to some other part of the country. I suppose Aubrey is in Crockett by this time. I hope she will like her new home. You write to Bob he was looking for a letter today, said to me he didn't get any letter. I asked him who from and he said from Kate. Yes, you meet the train, I will be there if nothing happens to prevent my coming. With best wishes, Love and Kises, Good night pleasant dreams,

Lovingly yours,

HARRY.

## PLAINTIFF'S EXHIBIT NO. 6

(Copy of Letter)

Saturday, 7:15 P. M., Sept. 2/16.

Dear Sweetheart:

Your ever welcome rec'd last P. M., glad as usual to hear from you. No we don't have much time together there is always some one around. Yes we have been fortunate as far as the night time is concerned. I am not much good at night. I am always to sleepy or asleep, a large pink rose just fell all over this just completely covered it up. My nice boquet is beginning to go to pieces. Sweetheart I would like to go down tonight but I have to much work to do tomorrow. I have been away more this summer than I ever have anywhere I worked.

As a rule I don't neglect anything, but I have been in Portland when I really ought to have been here. Whoever this man is that told you that the Lady would trade even her 30 apartments for your 13 rooms, must need fixing or else she is out of her head. You know, Sweetheart that could hardly be possible. Now as I can't come my advice to you is sell the house you now have if you possibly can, and forget about rooming houses just get you a couple of furnished rooms. There you won't have to be bothered with a mob around you all the time. I realize your ambition but Sweetheart there isn't anything to be made in that line especially where you have to be alone. There is nothing but plenty of hard work and no pay, but do as you like for I can't be there and here too. Well sweetheart it is raining here tonight and I got wet coming home from the mill, but I will soon be in bed and forget about it. There is some show people stopping here, two couple and a little fellow. They expect to be here until the middle of next week. I think I will shave now while there is hot water. Then I can take a bath tomorrow if I get time after I am through with my work. Wishing you success sweetheart will bid you a fond and loving goodnight, pleasant dreams. With best wishes, love and kisses and every little thing.

Lovingly yours,

HARRY.

## PLAINTIFF'S EXHIBIT 7

(Copy of Letter)

Tues. 9:30 P. M., Aug. 12/16.

Dear Sweetheart:

It is rather late but will write you a few lines before

I go to bed. I just came back from the Doctor's where I have been for most two hours, not sick or hurt only being examined for life insurance. I made application for \$5000 policy which may be of some benefit to both of us some day. I went to bed last night before 7:30. You bet I was some sleepy fellow. I just got on the train and sat down when it pulled out. I didn't have half a minute to spare. I had to wait at 5th street so long for a depot car. I wish I could stayed longer. I didn't want to leave at all. But it is a case of keep going or else go hungry. I was dreaming of you most all night why I don't know, for I seldom dream of any one. I hope you are well. I am some sleepy so good night Sweetheart with Love, Kisses and all the rest.

Lovingly yours,

HARRY.

(Envelope)

Cascade Locks, Oregon Sep. 13.  
Mrs. Kaythryn Smith,  
408 Main Street,  
Portland, Oregon.

# PLAINTIFF'S EXHIBIT 8

(Copy of Letter)

Wed's. 7 P. M., July 26/16.

Dear Sweetheart:

Just a few lines before bed time. I rec'd the papers from Mr. Jones last P. M. I will sign them and send

them back tomorrow. I am sending you the check for \$150 which you will hand him when he delivers the papers to you properly signed. I have to sign before two witnesses and so does Mr. Jones. I agreed to pay him \$100 for a half interest in the Canadian patent when it was granted, but in the papers he sent me it stated when the application and assignments are executed by Mr. Jones. He wants to change that part and have it read when the patent is allowed or granted. He wrote me a letter stating he would make such changes as I might suggest so before you hand him the check read the agreement and see whether he has changed that part of it the rest seems to be all right as far as I can see and understand. If you don't understand have Mr. Jones explain to you and see that he fully understands that he is to receive the \$100 when the patent is allowed and not when the application is made. I will write him regarding the change to be made so he will know what has to be done before he gets any money or check. Now if things are not right just hold the check and have him write or phone to me for I want him to be satisfied as well as myself. Now I trust this to you as you will receive one-half of whatever I may receive so you see you will have an interest after all. The weather keeps cool and you bet I like it. It has tried to rain today but did not do much. How is Asa getting along, is his tobacco all gone yet? I trust some little fellow is well and not working too hard with best wishes, Love, Kisses and all the other little things will bid you a fond and loving good night.

Lovingly,

HARRY.

(Envelope)

H. B. Hill

Cascade Locks, Oregon Jul 27.

Cascade Locks

Mrs. Kathryn Smith,

408 Main Street,

Portland, Oregon.

# DEFENDANT'S EXHIBIT "A"

(Copy)

Portland, Oregon, Dec. 22/16.

To Whom it May Concern:

This is to certify that I, the undersigned, H. B. Hill, have this twenty-second day of Dec., nineteen hundred sixteen have received from one Mrs. Kathryn Smith a deed for 7.58 acres more or less located in Clarke Co. State of Washington.

I, the undersigned, H. B. Hill, do hereby promise and agree to surrender and transfer said deed to one Mrs. Kathryn Smith upon the full payment of the consideration set forth in said deed and such other debts that might be incurred, such as taxes, assessments, etc.

Signed, H. B. HILL.

## DEFENDANT'S EXHIBIT "B"

(Copy)

## MORTGAGE

THE MORTGAGOR, KATHERINE ANDERSON, a spinster, of Vancouver, Clarke County, Washington, mortgages to JOHN KRAMER, of Vancouver, Clarke County, Washington, the following described real estate, situate in the County of Clarke, State of Washington, to-wit:

Beginning thirty-seven and forty-two hundredths (37.42) chains East and fifteen and sixty-eight hundredths (15.68) chains South of the Northwest corner of Section Ten (10) in Township Two (2) North of Range One (1) East of the Willamette Meridian, and running thence South four and thirty-two hundredths (4.32) chains to the Southeast corner of the Hannah J. Tyszkiewicz tract thence East seventeen and eighty-one hundredths (17.81) chains, more or less, to the center of the County Road; thence North 7 degrees 45 minutes West along the center of said road four and thirty-six hundredths (4.36) chains; thence West seventeen and twenty-eight hundredths (17.28) chains, more or less, to the place of beginning, containing seven and fifty-eight hundredths (7.58) acres, more or less, to secure the payment of the sum of FIVE HUNDRED (\$500.00) Dollars, and the interest thereon, in accordance with the tenor of a certain promissory note of which the following is a copy, to-wit:

\$500.00

Vancouver, Wash.  
September 21st, 1912.



Two years.....after date, without grace, for value received I jointly and severally promise to pay **JOHN KRAEMER** or order, at the Vancouver National Bank of Vancouver, Washington, Five Hundred (\$500.00.....Dollars With interest from date until paid at the rate of 8% per cent per annum, interest payable annually, and if not so paid, the whole sum of both principal and interest to become immediately due and collectible at the option of the holder of this note. If not so collected, the interest to be added to and become part of the principal, and the same to bear interest thereafter, until paid, at the rate of 8% per cent per annum. Principal and interest payable in U. S. Gold Coin. And in case action is commenced to enforce payment of this note or any portion thereof I jointly and severally, promise to pay such additional sum as the Court may adjudge reasonable as attorney's fees. It is especially agreed and consented to that a deficiency judgment may be taken in a suit upon this note.

**KATHERINE ANDERSON.**

P. O. Vancouver, Wash.

Due September 21, 1914.

It is especially agreed and consented to that a deficiency judgment may be taken in a suit foreclosing this mortgage.

Dated this 21st day of September, A. D. 1912.

**KATHERINE ANDERSON** (Seal).



Executed in presence of:

L. M. BURNETT,  
M. M. RICHARDSON.

State of Washington }  
County of Clarke } ss.

I, L. M. Burnett do hereby certify that on this 21st day of September, A. D. 1912, before me personally appeared Katherine Anderson, a spinster, to me known to be the individual described in and who executed the within instrument, and acknowledged to me that she signed and sealed the same as her free and voluntary act and deed, for the uses and purposes therein mentioned.

Given under my hand and Official Seal, this 21st day of September, A. D. 1912.

(Notarial Seal)

L. M. BURNETT,

Notary Public in and for the State of Washington,  
residing at Vancouver in said County.  
Endorsed:

No. 59774

MORTGAGE

From Katherine Anderson to John Kraemer

Dated Sept. 21st, 1912.

I hereby certify that the within instrument was filed for record on the 21st day of Sept., 1912, at 1 o'clock

P. M., and recorded in Book 99 Records of Mortgages, page 265 at request of M. M. Richardson.

WM. M. MARSHALL,  
Auditor and Recorder.

By.....Deputy.

Recorder's Fees, 90c.

Satisfied in full this 20th day of October, 1915.

MAY R. HAACK,  
County Auditor.

DEFENDANT'S EXHIBIT "C"  
(Copy of Letter)

COLUMBIA & NORTHERN FISHING  
AND PACKING COMPANY

Altoona, Washington, July 28/18.

Mrs. Kathryn Smith, Portland, Oreg.

Dear Mrs. Smith:

I have your letter of some recent date making inquiries as to the amount of money I have advanced you and which I hold your property as security for. I beg leave to state that I have paid and loaned to you more than one thousand dollars, but if you can possibly redeem the property by Jan. 1st, 1919, I will be willing to settle for a thousand.

Trusting you will be able to make a settlement by the first of next year, as I am anxious to get the matter settled.

Very truly yours,

H. B. HILL.

(Envelope)

H. B. Hill	Altoona
Columbia & Northern Fishing	Jul 30
and Packing Company	A. M. 1918
Altoona, Wash.	Wash.
U. S. America.	

Mrs. Kathryn Smith,  
472 Salmon St.,  
Portland, Oreg.

# DEFENDANT'S EXHIBIT "D"

(Copy of Letter)

WM. P. LORD  
Attorney at Law  
Suite 711 Lewis Building  
Portland, Oregon

January 22, 1919.

Mr. H. B. Hill,  
c/o Columbia & Northern Fishing & Packing Co.,  
Altoona, Wash.

Dear Sir:

Mrs. Kathryn Struett has conferred with me in relation to declaring the conveyance which you hold from her conveying certain real property in Clark County,

Washington, a mortgage, and that the legal title to this property be declared to her subject to your lien for the consideration set forth in the conveyance, together with taxes and assessments.

Under your letter of July 28th, you say that you will re-convey this property upon the payment of \$1000 on or before the first day of January, 1919; but as I construe the facts as they have been submitted to me, the only money that Mrs. Struett is required to pay is the amount expressed in your declaration of trust under date of December 22, 1916. The facts are, that any sums in addition to the sums indicated, were in the nature of presents and gifts on your part; consequently, the purpose in writing you this letter is to demand a re-conveyance of this property together with an accurate statement from you of the consideration paid by you for Mrs. Struett's benefit at the time of the execution of the deed.

If this matter is not attended to in the immediate future, I shall be constrained to commence suit against you to declare this conveyance a mortgage.

Yours very truly,

L/M

WM. P. LORD.

### DEFENDANT'S EXHIBIT "E"

No. 6877

Treasurer's Office, Clarke County, Washington

Statement of All Taxes for State, County, City,  
Town, School and Road for the YEAR 1916:

Roll 1, Page 57, Line 44, Subdivision No. 53, Anderson D. L. C., Acres 7.58, Valuation \$380, Tax \$14.82.

PAID June 2nd, 1917. Duplicate

Katherine Anderson  
3rd and Montgomery  
Portland, Ore.

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No. 134

Treasurer's Office, Clarke County, Washington  
Statement of All Taxes for State, County, City,  
Town, School and Road for the YEAR 1917.

Roll 1, Page 61, Line 29, Subdivision W. R. Anderson DLC No. 53, Acres 7.58, Valuation \$380, Tax \$14.82.

PAID Feb. 5, 1918

L. G. CONANT, Treasurer.

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No. 5959

Treasurer's Office, Clarke County, Washington

Statement of All Taxes for State, County, City,  
Town, School and Road for the YEAR 1915.

Roll 1, Page 65, Line 52, Subdivision Anderson DLC No. 53, Acres 7.58, Valuation \$420, Tax \$16.80.

PAID May 31, 1916

L. G. CONANT, Treasurer.

Certificate of Redemption from Delinquency Sale

Vanco, Wash., June 3rd, 1916.

Received from Katherine Anderson By Surrender No. Dollars in full for Redemption of the property hereinafter described, sold for the delinquent State, County, Municipal and all other Taxes for the years 1913 on the 18th day of October, 1915, and purchased by John Kraemer and Certificate of Delinquency No. 316 issued therefor. The above sum includes the amount of the Certificate of Delinquency, together with all Taxes, Assessments and Costs paid by the holder of the same subsequent to issuance thereof, with interest on the same to date, as per statement set forth herein.

Statement Showing Taxes which Redemption Covers

Description: Sec. or lot, Twp. or Blk., Range, Acres.

Cert. of Del. No. 316 for Taxes of 1913.

Redeemed by Surrender of Cert. No. 316.

I hereby certify that the above described property has this day been redeemed from the sale above mentioned.

In Witness Whereof I have hereunto set my hand  
and seal this 3rd day of June, 1916.

(Seal) L. G. CONANT, County Treasurer.  
By M. B. KIESS, Deputy.

\$30.00

1623

Seattle, Washington, Mar. 26, 1919.

Received from Wm. P. Lord, Attorney Proctor for Complaint the sum of \$30.00, on account of Clk. and Marshal's Fees in the case of Kathryn Struett vs. Harry B. Hill, No. 85-E.

U. S. District Court, Western District of Washington.

F. M. HARSHBERGER, Clerk.  
By ED. M. LAKIN, Deputy.

C. B.—

Docket El-85.

# DEFENDANT'S EXHIBIT "F."

(Copy)

KATHRYN STRUETT

To

HARRY B. HILL, Dr.

Oct. 20, 1915: Took up mortgage, paying.....	\$801.00
July 15, 1916: Loan, to buy rooming house.....	200.00
May 31, 1916: Paid 1915 taxes.....	16.80
June 3, 1916: Paid 1916 taxes.....	14.82
Feb. 5, 1918: Paid 1917 taxes.....	14.38
	<hr/>
	\$1,047.00

Interest at 6 per cent from October 20, 1915, to  
October 29, 1919 on \$801.....\$193.16

Interest at 6 per cent on \$200 from July 15, 1916 to October 29, 1919.....	40.40
Interest at 6 per cent on \$16.80 from May 31, 1917, to October 29, 1919.....	3.42
Interest at 6 per cent on \$14.82 from June 3, 1916, to October 29, 1919.....	3.03
Interest at 6 per cent on \$14.38 from Feb. 5, 1918, to October 29, 1919.....	1.48
<b>TOTAL</b> .....	<b>\$1,288.49</b>

State of Washington }  
County of Pierce } ss.

L. D. Heflin, being first duly sworn, says:

I was the official and acting court reporter in the trial of the above entitled cause before the Honorable E. E. Cushman, one of the judges of the above entitled court, and as such court reporter made a full, true and accurate shorthand record of the oral testimony, motions, objections, rulings, exceptions and other proceedings had and done in said trial; and that the above and foregoing is a true and correct transcript of my said shorthand notes of the oral testimony and other proceedings above referred to take by me in shorthand as aforesaid, together with correct copies of the exhibits offered and received in evidence.

L. D. HEFLIN.

Subscribed and sworn to before me this 26th day of August, 1920.

ED. M. LAKIN,  
Deputy Clerk of the Above Entitled Court.



And Thereafter, to-wit, on the.....day of December, 1920, there was duly filed in the District Court of the United States for the District of Washington, Southern Division, a

## CERTIFICATE TO TRANSCRIPT OF RECORD ON APPEAL

in words and figures as follows, to-wit:

(Title Omitted)

The attorneys for the respective parties to the within and foregoing entitled cause, having stipulated that the within printed transcript of record, as prepared, compared and tendered to me for certification, by the attorneys for the plaintiff, appellant herein, is a true transcript of all the record, papers and proceedings had and taken in the above entitled court in the above entitled cause, including all of the Exhibits referred to therein; and the said attorneys having further stipulated that I shall certify the foregoing printed transcript in accordance with said stipulation and without comparison thereof:

Now, therefore, in accordance with the said stipulation and the rules of the above entitled court, I, F. M. Harshberger, Clerk of the District Court of the United States for the District of Washington, Southern Division, do hereby certify that the foregoing printed pages number from 1 to 190, inclusive, are a full, true and

correct transcript of the record, papers and proceedings had and taken in the above entitled court in the above entitled cause, as the same appears of record and are on file in my office and in my custody, including all of the Exhibits referred to therein.

And I do further certify that in accordance with the said order of the said United States Circuit Court of Appeals, I have transmitted to the clerk thereof, as a part of the record in said cause on appeal, all of the said Exhibits offered in evidence on the trial of said cause; and I further certify that the fee for certifying to the within transcript, to-wit, the sum of <sup>#43.12</sup> fifty cents, has been paid, by the plaintiff, appellant herein.

In Testimony whereof, I have hereunto set my hand and affixed the seal of said Court at Tacoma, Washington, in said district, this 20th day of Jan <sup>1926</sup>ber, 1926.

F. M. HARSHBERGER,

Clerk of the United States Court, for the State of Washington, Southern Division.

By Ex. M. Lalcin  
Deputy Clerk

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CERTIFICATE OF COURT TO ABSTRACT OF TESTIMONY AND  
ORDER MAKING SAME PART OF RECORD

(Title Omitted)

Now, on this 19th day of January, 1921, the foregoing Transcript of Testimony, consisting of pages 1 to 190, having been presented to the undersigned Judge of said Court, <sup>who</sup> tried the cause, by the attorney for the plaintiff, and a copy of said Transcript of testimony having heretofore and in due course been served upon the attorneys for the defendant in this action and no exceptions or amendments having been made to said Abstract of Testimony, and the parties having stipulated as to the correctness of said abstract, the Court does now certify that said abstract is a full, complete and correct abstract of all the testimony introduced by the parties on the hearing of said cause and constitutes all the substantial testimony herein material to the issue, and it is

ORDERED: That said Abstract of Testimony be and hereby is made a part of the record.

IT IS FURTHER ORDERED: That Exhibits 1 to 8 both inclusive, which introduced in evidence were

and marked as such Exhibits on the part of the Plaintiff, and Exhibits "A" to "F", both inclusive which were introduced in evidence and marked as such Exhibits on the part of the Defendant be and the same hereby is made a part of the Record.

Dated January 19th, 1921.

EDWARD E. CUSHMAN

Judge

